
Electronic Filing in Criminal Actions and Proceedings:

**A REPORT TO
THE GOVERNOR, LEGISLATURE AND CHIEF JUDGE**



**THE NEW YORK STATE
UNIFIED COURT SYSTEM**

Electronic Filing in Criminal Actions and Proceedings:

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Report on Electronic Filing in Criminal Actions and Proceedings

I. INTRODUCTION

IN HIS STATE OF THE JUDICIARY ADDRESS delivered to the Legislature, Judiciary and Bar on February 14, 2012, Chief Judge Lippman restated his commitment to improving the efficiency of the courts by harnessing the power of technology, particularly with regard to electronic filing (“e-filing”).

“Every year, the attorneys and litigants in our courts purchase hundreds of millions of pieces of paper, serve a mountain of paper on opposing parties, and file it with the courts. All this paper has to be transported, stored, retrieved as needed, and, ultimately, disposed. The waste, inefficiencies, and cost are enormous.”

Chief Judge Lippman estimated that the overall savings to the courts, litigants, the Bar and county clerks from universal e-filing eventually will exceed \$300 million a year. In his words, “In the year 2012, this is not a pipe-dream; it is the very least that we should do to move the courts boldly and efficiently into the 21st Century.”

In enacting Chapter 543 of the Laws of 2011, empowering the Chief Administrative Judge to expand consensual and mandatory e-filing throughout the state in a wide variety of civil matters, the Legislature called for a formal study and report to the Legislature, Governor and Chief Judge containing the Chief Administrative Judge’s recommendations for legislation authorizing development of an e-filing program in criminal actions and proceedings. Chapter 543 also directed the Chief Administrative Judge to create an Advisory Committee representing the full spectrum of the state’s criminal justice community to consult with her regarding the development of a program relating to the “use of electronic means for the commencement of criminal actions and the filing and service of papers in pending criminal actions and proceedings.” The Chief Administrative Judge’s report is required to evaluate the impact of e-filing on litigants, practitioners and the courts, reflect the input received from affected entities and individuals, and contain the recommendations of the Advisory Committee. A copy of Chapter 543 is attached as Appendix A of this report.

Chief Administrative Judge A. Gail Prudenti has established an Advisory Committee consisting

of 22 members representing all of the affected constituencies listed in the legislation.¹ The Advisory Committee met five times to exchange views, discuss concerns, and provide input and recommendations regarding e-filing in New York’s criminal courts. The Committee was provided with extensive information about the history and current status of e-filing in the New York courts. Members participated in one of four online visual demonstrations of the New York State Courts Electronic Filing System (“NYSCEF”) where they had the opportunity to observe how documents are e-filed and ask questions of the presenters. The Advisory Committee had the opportunity to review and comment on preliminary and proposed final versions of this report, including the final recommendations and legislative proposal set forth herein. A copy of the written commentary submitted by individual Committee members and interested organizations is set forth in Appendix D of this report.

The Advisory Committee’s invaluable input, summarized in section IV of this report, is closely reflected in the final recommendations contained in section V. While generally supportive of e-filing in criminal cases, the Committee members and several affected organizations — the District Attorneys Association of the State of New York, the New York State Defenders Association, and the County Clerks Association — raised a number of key issues and concerns. Most of these concerns were expressed in response to earlier drafts of this report. As a result of the commentary received, the recommendations contained in this report have evolved over time to where they now fairly reflect the Committee’s consensus on how New York State should proceed with the introduction of e-filing in criminal actions and proceedings. In particular, the proposed legislation provides for the gradual expansion of e-filing to criminal actions and proceedings beginning with a limited number of pilot programs in the supreme and county courts in up to six counties throughout the state. Importantly, pilot programs for mandatory e-filing will be established only with the consent of key stakeholders — District Attorneys, the defense bar and county clerks.

Subject to the safeguards and concerns discussed in this report, e-filing will be a beneficial, cost-saving development for all who participate in and comprise the criminal justice community. In an age of e-banking, e-commerce and electronic submission of income tax returns, and seven years after the federal courts mandated e-filing in all civil and criminal cases, it is time for New York to redouble its commitment to e-filing of court documents. Based on the proven track record of e-filing in New York’s courts of civil jurisdiction, and to afford the entire justice system the cost-savings and other benefits of e-filing, this report urges the legislature to give the Chief Administrative Judge authority to authorize mandatory and consensual e-filing of criminal actions and proceedings in the state’s superior courts in the manner and to the extent described in section V. The elements of a legislative proposal are described in detail in section V of this report, and a draft legislative proposal is included as Appendix B to this report.

1- Chapter 543 specified an Advisory Committee consisting of county clerks, chief clerks of supreme, county and other courts, district attorneys, not-for-profit legal service providers, public defenders, statewide and local specialty bar associations devoted to criminal practice, institutional providers of criminal defense services and other members of the criminal defense bar, representatives of victims’ rights organizations, and unaffiliated attorneys affected by e-filing.

II. HISTORY OF E-FILING IN NEW YORK

E-FILING WAS FIRST AUTHORIZED IN NEW YORK IN 1999 for a small class of cases in a limited number of venues. No cases were e-filed in 1999. Thirteen years later, as the Legislature has gradually expanded authorization for the use of e-filing, much progress has been made. More than 1.3 million documents have now been e-filed in the New York courts in approximately 350,000 cases by more than 21,000 registered users of the New York State Courts Electronic Filing System (“NYSCEF”).

Since its inception in New York, e-filing has proven to be reliable, efficient, convenient and secure. The NYSCEF program allows court papers to be filed and served, virtually instantaneously, at any time and from anywhere, without the need to travel to the courthouse. Attorneys can access their case files online at any time of the day or night, from any location with an internet connection. E-filing has the potential to dramatically reduce record storage, retrieval and reproduction costs, largely eliminates the burden and expense of serving papers on opposing parties, and eliminates the valuable time lost in traveling to the courthouse to file or retrieve documents. E-filing promises significant cost savings for litigants, attorneys, the courts, and county clerks. It is estimated that universal e-filing could eventually reduce litigation costs by hundreds of millions of dollars a year for the individuals, businesses and state and local governments who litigate in the New York courts. E-filing also embodies a greener, more environmentally responsible approach by our justice system, eliminating the thousands of tons of paper filed and served each year.

The organized Bar has recognized these significant benefits and supports expansion of e-filing in the state courts. The New York State Bar Association’s House of Delegates adopted a resolution in March 2007 noting that e-filing offers “significant advantages over paper filing, including savings of cost and time to clients and attorneys.”² The New York City Bar Association issued a report in 2008 “wholeheartedly support[ing]” e-filing.³

CONSENSUAL E-FILING PROGRAMS

Over the years, the Legislature enacted a series of amendments authorizing consensual e-filing on a pilot basis in a growing number of courts and case types. After a decade of experience, e-filing ceased to be a pilot program with the enactment of Chapter 416 in 2009, empowering the Chief Administrative Judge to issue rules authorizing a program of consensual electronic filing and service of documents in cases in the Supreme Court, the Court of Claims, the Surrogate’s Court, and the New York City Civil Court. Consensual e-filing is authorized today by rule in the Supreme Court

²- Resolution of the NYSBA House of Delegates, March 31, 2007, at 1.

³- Association of the Bar of the City of New York, *Comments by the Association of the Bar of the City of New York on the Report and Recommendations of the Task Force on Electronic Filing of Court Documents of the New York State Bar Association*, March 5, 2008, at 2.

in 15 counties in a variety of case types, primarily in commercial, tort, and tax certiorari cases; in Surrogate's Court in 11 counties; in the Court of Claims in the 12-county Albany District; and in one type of case in New York City Civil Court. The table in Appendix C presents an up-to-date picture of all e-filing programs in New York State.

MANDATORY E-FILING PROGRAMS

The pace of paperless litigation is accelerating in New York. In 2009, Chapter 416 for the first time authorized a pilot program in the use of mandatory e-filing in a limited number of venues and classes of cases: certain commercial actions in New York County; tort actions in Westchester County; and in any classes of actions in a county outside New York City (except matrimonial actions, and CPLR Article 78, Mental Hygiene Law Article 81 and Election Law proceedings). Chapter 528 of the Laws of 2010 modestly expanded the mandatory e-filing program, empowering the Chief Administrative Judge to adopt rules authorizing its use in certain commercial cases in Westchester County and in Livingston, Monroe, Rockland and Tompkins Counties.

Last year's legislative authorization, Chapter 543, expanded mandatory e-filing to more case types in additional counties in the state. As of March 1, 2012, mandatory e-filing will be in place for a wide variety of civil matters in Supreme Court in New York, Westchester, Rockland, Kings and Bronx counties, and for certain Surrogate's Court proceedings in Chautauqua, Erie and Monroe counties. A table setting forth all active consensual and mandatory e-filing programs in New York is included with this report as Appendix C.

In 2010 and 2011, the Administrative Board of the Courts authorized the Chief Administrative Judge to implement mandatory e-filing programs as follows:

- New York County Supreme Court. Mandatory e-filing began in May 2010 for certain newly-filed commercial cases, and now applies to commercial contract and tort actions without regard to the amount in controversy.
- Westchester County Supreme Court. Mandatory e-filing of commercial and tort cases was introduced in stages, from February to June 2011, and now applies to all civil actions, except those expressly excluded by statute (CPLR Art. 78 and election law proceedings, and matrimonial and Mental Hygiene Law matters).
- Rockland County Supreme Court. Mandatory e-filing began in June 2011 in all case types, except those expressly excluded by statute.
- Kings County Supreme Court. Commercial actions where the amount in controversy equals or exceeds \$75,000, effective February 27, 2012.
- Bronx County Supreme Court. Medical malpractice actions, effective February 27, 2012.

- Chautauqua, Erie and Monroe County Surrogate's Courts. Probate and administration proceedings and miscellaneous proceedings related thereto, effective March 1, 2012.

In each of these locations, the Chief Administrative Judge consulted extensively with the affected county clerks and local bar associations, all of whom enthusiastically welcomed e-filing, and the transition to a mandatory system, though still in its early stages in some areas, has gone smoothly for all concerned. Since the May 2010 commencement of mandatory e-filing in New York County, a total of more than 68,000 new cases have been commenced electronically in the counties and case types subject to mandatory e-filing.

III. THE NYSCEF SYSTEM

OVERVIEW OF NYSCEF

The NYSCEF program allows attorneys and self-represented litigants to file and serve court papers at any time of day and from any location, without the need to travel to the courthouse. NYSCEF also allows counsel with internet access to view the case file at any time from any place. NYSCEF requires no special hardware or software. Rather, the equipment needed for e-filing is now standard in virtually every law office: a computer, basic software (a web browser and a PDF/A reader/writer such as Adobe), internet access, and a scanner. In order to file documents, an attorney or self-represented litigant must obtain a user ID and password, a simple process that takes place online. A single user ID and password allows an attorney registered in New York to e-file in any county, court, or case type that is authorized for e-filing. A user ID and password are not required to view non-secure and non-sealed documents in civil case files in NYSCEF as a guest online (such public access would not be available for e-filed documents in family and criminal court cases). Aside from the normal court filing fees, there is no charge to use NYSCEF.

NYSCEF is exceptionally user-friendly. Documents to be e-filed are first converted into PDF/A format either by software conversion immediately after the document has been created or through a scanner — a simple process familiar to most attorneys today. The e-filer then signs onto NYSCEF with a user ID and password and, by following the instructions on a series of clearly designed and easily understandable screens, transmits the document to the NYSCEF system. For those documents that require payment of a fee (such as a commencement document or a notice of motion), NYSCEF offers secure online payment options via credit and bank cards.

After the document is transmitted, NYSCEF automatically generates an email notification of receipt that is sent to the e-filer and to all other e-filing parties in the case. These notifications, containing a secure link to the newly-filed document, generally constitute service of that document on the participating users. Except for the initiating papers, which still must be personally served in hard copy format even in a case that has been commenced electronically, the parties thereafter generally are relieved of the burden of serving papers on opposing parties — NYSCEF automatically performs that function and records that it has done so.

SECURITY

The system provides several layers of security — an issue of obvious concern in the criminal and family law contexts. After nearly thirteen years of use and experience, there is good reason to be confident about the security of NYSCEF itself and its ability to protect the confidentiality of e-filed documents containing personal and sensitive information. Indeed, e-filing provides a level of security far greater than what prevails now for documents in paper form. E-filed documents are

much less susceptible to loss or destruction by human error, flood, fire or other natural or man-made disasters. Unlike paper, electronic documents can be copied readily. In fact, the NYSCEF system is protected by back-up file servers, so even if one file server fails, all affected data are preserved elsewhere and available for prompt use. The NYSCEF system has extensive protections against hackers and other malicious actors, with state-of-the-art encryption upon receipt of all e-filed data. NYSCEF only accepts files in PDF/A format, which, unlike word processing files, cannot be altered.

In addition to existing statutory protections, such as General Business Law § 399-dd(6) providing that attorneys shall not, with narrow exceptions, file documents with the clerk of the court revealing social security numbers, NYSCEF also provides strong protections for confidential information in e-filed documents. When e-filing a document containing confidential information, such as information about a person's health, the e-filer has the option of filing the document as "secure," an easy step under NYSCEF that does not require court approval. A document e-filed in secure status is accessible online only to the attorneys or other filers participating in the e-filed case.⁴ Further, NYSCEF readily allows the court clerk or the county clerk to "seal" specific documents or entire case dockets as required pursuant to statute, rule or court order, with the court's order directing the extent, if any, to which the documents can be viewed by the parties to the case.

OPT-OUT PROVISION

While NYSCEF is very user-friendly, some attorneys, particularly solo and small firm practitioners, may lack the technical knowledge or equipment necessary to e-file. Therefore, e-filing legislation and implementing rules in New York have provided that attorneys may "opt out" of any mandatory e-filing program through a simple, straightforward procedure. Any attorney may opt out without court action by filing a form with the clerk of the court certifying that he or she lacks the equipment and/or the technical knowledge required to e-file. Alternatively, the court can exempt an attorney from e-filing where good cause is shown. As a practical matter, there have been very few instances in which attorneys have felt the need to opt out. To date, less than one percent of attorneys have chosen to opt-out of mandatory e-filing programs in New York.

TRAINING AND OUTREACH

The NYSCEF Resource Center is a statewide help center that offers e-filing training programs for attorneys several times a week in New York County and around the state. Participating attorneys receive two hours of CLE credit offered at no cost. Various jurisdictions, such as Westchester County (in a collaboration between the County Clerk there, Hon. Timothy Idoni, and the Supreme Court), and bar associations working with local court and county clerk staff, also provide training in e-

⁴- However, as with any document in paper form, it would be available for inspection at the courthouse or county clerk's office via a computer, unless it has been "sealed" pursuant to court order.

filing. Attorneys can register to take training courses on the NYSCEF web site. Many attorneys have begun using NYSCEF without formal training, as the system is intuitive and easy to use. The NYSCEF web site offers a “sandbox” system where users can practice e-filing in a simulated setting. The NYSCEF system resembles the Federal Electronic Case Filing (“ECF”) system, so those attorneys with e-filing experience in the federal courts have little difficulty adapting to NYSCEF. Any registered or prospective e-filer can get live or online assistance by calling the NYSCEF Resource Center or visiting its web site, which contains a wealth of resources, from a *User’s Manual* to an online demonstration visually explaining how documents are e-filed.

E-FILING IN OTHER JURISDICTIONS

E-filing has moved more rapidly in the federal courts than in New York. Implementation in the U.S. District Courts commenced in 2002 and in the appellate courts in 2005. E-filing is mandatory in the federal courts and has become a basic and accepted component of federal court operations and federal law practice. The ECF system is now in use in all District Courts for civil and criminal cases, Bankruptcy Courts nationwide, all regional Courts of Appeal, the Court of Federal Claims, and the Court of International Trade. Over six million documents are e-filed every month in the federal courts, and over 500,000 attorneys use the e-filing system.

E-filing is becoming the norm in state courts nationwide. It is now authorized in 41 states, and is contemplated in most of the rest.⁵ Since most of the state trial courts in the United States are administered locally, implementation of e-filing in those courts is a county-by-county process — usually accompanied by statutory authorization for pilot programs with implementing court rules. These pilot programs abound; some encompassing all civil cases, some with selected categories of civil cases. Those with selected cases generally include commercial cases, mass torts and mortgage foreclosures, and some include domestic relations, probate, family, and criminal cases. E-filing is expanding, for instance, to probate proceedings, family and domestic relations cases (Vermont and Colorado), and to criminal matters (Alabama, Arizona, Florida, Nebraska, and Vermont). Significantly, of those states that have operating e-filing programs, more than one-third have mandatory filing, including states such as Connecticut, where all civil cases must be e-filed.

5- Report of the Chief Administrative Judge to the Governor, the Chief Judge, and the Legislature, e Filing in the New York State Courts, June 2011, at 10.

IV. ADVISORY COMMITTEE COMMENTARY

THE ADVISORY COMMITTEE GENERALLY SUPPORTS THE INTRODUCTION OF E-FILING in criminal actions and proceedings in New York, believing it will improve the efficiency of the criminal justice system if implemented gradually, as described below, and if criminal defense providers and prosecutors are afforded the resources needed to adapt to its implementation. In the future, e-filing has the potential to produce important cost-savings for state and local governments, especially District Attorneys, public defenders, assigned counsel programs, county clerks, trial courts, and others.

AUTHORIZATION OF E-FILING

In addressing how e-filing should be implemented, the Advisory Committee recommends providing the Chief Administrative Judge with authority to authorize mandatory e-filing in superior courts of criminal jurisdiction in a limited number of counties within the state where the key stakeholders — District Attorneys, defense bar and county clerks — consent to participate in such a program. Where these stakeholders agree to participate, the Chief Administrative Judge would establish e-filing programs in those counties by rule, with the approval of the Administrative Board of the Courts.⁶ The Chief Administrative Judge should also be authorized to promulgate court rules establishing voluntary e-filing programs in supreme and county courts in any county where affected stakeholders are interested in and capable of successfully establishing e-filing programs. This gradual approach to the expansion of e-filing into the criminal courts is consistent with how most e-filing programs have been tested and instituted in New York.

The Committee recommends that enabling legislation provide the Chief Administrative Judge with discretion to identify the specific counties interested in establishing e-filing programs. The Chief Administrative Judge is in the best position to assess local conditions and make determinations regarding those counties that are ready to consent to and adopt e-filing successfully. In implementing e-filing programs, the Advisory Committee emphasizes the need for flexibility to accommodate the diversity of local court practices prevailing around the state. The Office of Court Administration (“OCA”) has extensive experience in establishing e-filing pilots under prior legislation while working cooperatively with local stakeholders.

The Advisory Committee emphasized the need for OCA to work closely with District Attorneys, institutional providers of defense services, assigned counsel programs, county clerks and others to provide training and technical assistance in the development of e-filing programs. Consistent with prior expansions of e-filing, the Chief Administrative Judge should start with a consensual program in a locality before phasing into a mandatory program when essential participants have

6- The Administrative Board of the Courts consists of the Chief Judge and the four Presiding Justices of the Appellate Division.

expressed consent, demonstrated their readiness, and any technical issues have been worked out. Committee members opined that a particular county's readiness to pursue e-filing in criminal cases will depend heavily on the interest of the District Attorney and institutional defense providers.

The Committee also discussed the advisability of providing for a sunset provision in legislation authorizing e-filing in criminal actions and proceedings. Some members urged a sunset provision of January 1, 2018, while others would defer to the Chief Administrative Judge or the Legislature on this issue.

CASES SUBJECT TO E-FILING AND RESOURCE ISSUES

The Committee recommends that e-filing in criminal matters should begin with a program limited to the prosecution of an indictment or superior court information charging only felony crimes in the supreme or county court. The Committee debated the wisdom of e-filing in misdemeanor cases in the lower criminal courts and believes it should not be legislatively authorized at this time. Rather, e-filing in the lower criminal courts should be deferred until there has been a reasonable opportunity to evaluate the experience with e-filing of felony matters in the superior courts. Although the Committee endorses e-filing in superior courts because it generally agrees that it could be implemented without significant disruption or added resources, expanding e-filing to higher volume misdemeanor courts could be more challenging since it may require additional support staff, more modern scanners/copiers, greater technology resources to handle scanned imaging, and modifications to office case management systems. The Committee thus recommends that legislation explicitly exclude all local criminal courts from e-filing at this time.

E-FILING OF SENSITIVE AND CONFIDENTIAL DOCUMENTS

The Advisory Committee is concerned about ensuring that provisions of law governing the sealing of records and confidentiality in criminal cases continue to be fully respected both in any e-filing legislation and by the NYSCEF system. The Committee urges that e-filing legislation or implementing court rules contain language specifying that where a record or part of a record is sealed or made confidential by statute, rule or court order, such record, where e-filed, shall also be "sealed" or made confidential.

The Committee recommends that the parties not be required to e-file certain documents now sealed by law, such as search warrants and wiretap applications, ex parte applications, sealed indictments, and documents that could compromise the security of witnesses. The Committee believes that the parties should retain the option of e-filing such papers as sealed documents in NYSCEF. If the parties opt to file such documents in paper form instead, the court will take appropriate steps to make sure such documents become part of the official electronic case file. The Committee was informed that NYSCEF can accommodate these concerns and permits documents to be e-filed as sealed documents that are not viewable by anyone, including the parties to the case, as the court's

order may direct.

Unlike e-filing in civil cases, e-filed records in criminal cases will not be available for public viewing online. The Committee recommends inclusion of language in the legislative proposal explicitly stating that the NYSCEF system will not be accessible to the public for online inspection of criminal case records.⁷ In the Committee's view, such a provision will avoid harm from inadvertent public disclosure of sensitive information through e-filing. Online access to e-filed documents in criminal cases will be limited to the attorneys in the case or an unrepresented party given permission by the court to e-file. However, as is the case now for paper records, files containing public records may be viewed by members of the public at the courthouse, the difference being that electronic files will be accessible on a computer terminal located in the courthouse or county clerk's office. Of course, any document filed as a sealed document or otherwise required to be sealed by statute, rule or court order will not be part of the public record and will not be accessible.

In the Committee's view, e-filing in criminal matters generally will be limited to the papers commencing a criminal action, omnibus motions and defense responses to omnibus motions, and other motions such as post-conviction CPL 440 motions. In addition, decisions, orders and other documents signed by the court should be e-filed. The Advisory Committee discussed whether *Rosario* or other discovery materials should be subject to e-filing, and noted that CPL sections 240.20 and 240.30 do not mandate service of discovery/*Rosario* materials on the court. Nor does CPL 710.30 require filing with the court of pre-trial notices of intent to introduce suppressible evidence. As to other discovery, filing with the court generally is not contemplated, unless there is a motion for a protective order or a motion to compel. In that circumstance, sensitive materials accompanying the motion need not be subject to e-filing. The Committee opined that legislation or implementing court rules should not mandate e-filing of any particular discovery or *Rosario* materials, but instead permit e-filing at the option of (or, alternatively, upon the mutual consent of) the District Attorney and defense counsel.

The Advisory Committee looks forward to working closely with the court system in the future to develop court rules setting forth procedures to guard against public disclosure of confidential and sensitive case data, and to address how and when discovery materials should be e-filed with the court. The Advisory Committee believes that creation of a hybrid court file consisting of both digital and paper documents should be avoided. This would be inconsistent with one of the overriding goals of e-filing, which is to have a single official electronic court file for each case. Thus, the Committee recommends that implementing court rules also address the manner and timing pursuant to which paper documents filed with the court become part of a single electronic file for each case. The Committee looks forward to working with the court system on this and other important

7- Legislation should not preclude the court system from continuing its current practice, in appropriate cases, of providing access to public criminal case records on its website in high-profile matters generating intense public and media interest. The NYSCEF system would not be used to facilitate this practice.

implementation issues, with the goal of striking a balance between promoting uniformity of policy and allowing some flexibility to accommodate varying local approaches to discovery procedures.

The Advisory Committee additionally recommends that e-filing legislation or implementing court rules specify that a requirement to e-file a document will not affect any statutory obligations relating to personal service of that document. In the event this issue is not addressed in legislation, court rules implementing such legislation should contain a prominent provision clearly stating that any document now required by law to be personally served on a party in a criminal case must continue to be personally served under an e-filing system.

SECURITY OF NYSCEF

Many of the Committee's concerns focused on the security of the NYSCEF system and the confidentiality of personal/sensitive information in e-filed documents. Discussions with OCA Information Technology directors and staff made clear that documents filed with NYSCEF are highly secure, containing the same level of security against hackers, such as 128 bit encryption, now utilized by internet banking web sites and electronic commerce sites like Amazon.com. All traffic between e-filers and NYSCEF servers, and between OCA's servers, is encrypted. Data in the NYSCEF system is backed up by multiple secure servers. Even if one server fails, the data is preserved elsewhere and still available for prompt use. In addition, OCA's data center uses an extensive series of firewalls, including web application firewalls and virus-checking programs, as further security layers. The number of OCA personnel with access to NYSCEF data and programs on the servers is limited. All PDF documents are checked to insure they are not infected with "malware," and all programs written by OCA are subjected to software designed to prevent virus attacks. All NYSCEF users are provided with a unique username and password.

PRACTICAL ISSUES

The Advisory Committee also noted the practical issues that e-filing raises for District Attorney and public defender offices where multiple attorneys often work together on the same matter. NYSCEF needs to be robust enough to handle the transfer of cases between attorneys in large offices smoothly and efficiently. When attorneys resign from office, take a leave of absence or transfer to another bureau, their cases must be reassigned quickly within the office. NYSCEF has the technical capability to meet these concerns and the Committee was informed that, upon notification to NYSCEF, the necessary changes, including insuring the departing attorney no longer has access to cases, ordinarily can be effectuated within a matter of hours. Even where hundreds or thousands of cases are involved, it should not take more than one or two days to provide new attorneys with complete access to the cases.

NYSCEF permits multiple attorneys in a law office to have access to the electronic files in any given case. NYSCEF also permits multiple attorneys in a single law office to receive email no-

tifications each time a document is e-filed in a particular case, with secure links provided to each document. Such notifications will be sent to the attorneys of record and/or to a specific email address that serves as an “intake” for the entire office. Some institutional litigants who currently use NYSCEF rely on just such a general “intake” email address to receive e-filing notifications of documents pertaining to new case filings and to documents e-filed in pending cases involving the agency’s attorneys. This greatly facilitates case assignments to attorneys. Offices may, if they choose, establish “rules” that will automatically forward filings in the special e-mail box to designated attorneys. In addition, NYSCEF allows paralegals to obtain a Filing Agent User ID and Password so that they can e-file documents on behalf of attorneys in an office who do not wish to do the filing themselves. The Committee believes that the flexibility built into the NYSCEF system will ensure a smooth transition to e-filing by institutional litigants, and OCA has expressed its readiness to work with such litigants at the technical level to accommodate office needs and preferences.

The Advisory Committee recommends that e-filing legislation in criminal actions and proceedings contain the same “opt-out” provisions for attorneys as have been enacted in prior e-filing legislation for courts of civil jurisdiction. Under this provision, attorneys may be exempted from e-filing without court action by certifying to the clerk of the court that they lack the equipment and/or the technical knowledge required to e-file. In addition, legislation should provide that lawyers may be exempted from e-filing by the court upon demonstrating good cause. However, the Committee believes that unrepresented parties should be automatically exempt from e-filing, unless they choose to participate in e-filing.

COMMENTARY OF INTERESTED ORGANIZATIONS

In addition to the oral and written input provided by individual Advisory Committee members, the Committee received formal written commentary from the District Attorneys Association of the State of New York, the New York State Defenders Association, and eight members of the County Clerks Association. This commentary is set forth in Appendix D. The issues and concerns expressed in these submissions were raised in response to earlier drafts of this report, with the final recommendations and legislative proposal evolving significantly in response to this feedback.

While generally supportive of e-filing in criminal cases, the commenting organizations raised several issues of particular importance to them: ensuring that mandatory e-filing programs would not be established by the Chief Administrative Judge without the consent of affected county clerks; emphasizing that many county governments are ill-prepared to absorb any additional costs that may be imposed by e-filing on county-funded prosecutor and defense offices; adopting effective procedures to insure that e-filed documents containing sensitive information are properly sealed and protected from public view, and introducing redaction software to prevent public disclosure of sensitive data within a document where it is not otherwise necessary to seal the whole document; overcoming the practical and financial obstacles to providing public access to criminal case files at the court-

house or the county clerk's office; and, providing adequate technical support to county clerks, prosecutors and public defenders, particularly in addressing any incompatibilities between the NYSCEF system and local technology systems.

In response to these concerns, the proposed legislation authorizing e-filing in criminal actions and proceedings specifically provides that a mandatory e-filing program can be established only in those counties where all three of the district attorney, criminal defense bar and county clerk consent to participate in such a program. This approach ensures that mandatory e-filing will not be introduced in a county lacking the technological or fiscal wherewithal to move forward based on the inability or lack of readiness of the county clerk, district attorney, or defense bar to commit fully to e-filing in criminal cases.

The organizations' commentary was particularly helpful in identifying a number of important practical and technical issues that will need to be addressed as part of the implementation process. It is critical that the court system continue to consult and work closely with the Advisory Committee and all affected stakeholders to make sure that important "nuts and bolts" issues are resolved before local e-filing programs are commenced. Some of the more significant issues include adopting effective procedures for the sealing of court documents, and overcoming practical and financial obstacles to facilitating public access to criminal files at the courthouse or county clerk's office. The Advisory Committee believes that all of these challenges can be met based on the gradual and consensual approach to e-filing reflected in the legislation recommended by this report.

STUDY OF LAWS GOVERNING RETENTION OF COURT RECORDS

The Advisory Committee believes that legislative expansion of e-filing should be accompanied by a strong commitment to studying how the state can begin moving toward electronic retention of records in criminal matters. E-filing legislation should authorize a study to explore the extent to which existing statutes and court rules require the courts, District Attorneys and others to retain hard copies of documents in pending or disposed cases. For example, Judiciary Law § 89(2) provides for a 25-year retention period. The Committee believes a study would identify significant cost savings associated with eliminating or reducing the current lengthy retention schedules for storage of paper documents. Such savings could be used to offset any additional financial burdens to state and local governments imposed by implementation of e-filing. As the Chief Judge stated in his 2012 State of the Judiciary message, in our increasingly digital age the transport, storage and retrieval of so much paper is wasteful and inefficient.

The Advisory Committee also cautioned that the savings and efficiency of e-filing can be undermined to the extent copies of e-filed court documents continue to be printed out in paper where courts require "working copies."

V. RECOMMENDATIONS– for Legislation and Court Rules Authorizing E-Filing in the Criminal Courts

A. The Judiciary recommends the enactment of legislation to permit e-filing, until September 1, 2015, as follows:

- The Chief Administrative Judge should be authorized to promulgate court rules, with the approval of the Administrative Board of the Courts, permitting participation in e-filing in supreme and county courts on a voluntary basis upon consent of the parties.
- The Chief Administrative Judge should be authorized to promulgate court rules, with the approval of the Administrative Board of the Courts, providing for mandatory e-filing in supreme and county courts in up to six counties where the district attorney, criminal defense bar and county clerk in such counties consent to participate in such a program.
- E-filing should apply to an accusatory instrument filed with the court for the purpose of acquiring jurisdiction in a superior court criminal action or proceeding, as provided for in articles 195 and 200 of the Criminal Procedure Law, and to the filing and service of papers in pending criminal actions and proceedings.
- E-filing should not be authorized in City Courts, District Courts, the New York City Criminal Court or in the Town and Village Justice Courts at this time.
- Nothing in legislation authorizing e-filing shall affect or change any existing laws governing the sealing and confidentiality of court records in criminal actions and proceedings, nor shall any party be compelled to e-file a sealed document.
- For purposes of pilot e-filing programs authorized by this legislation, criminal case records shall not be available for public inspection online.
- Authorization for e-filing in criminal actions and proceedings should expire on September 1, 2015.
- The Chief Administrative Judge should issue a progress report to the Legislature by January 1, 2015, evaluating the progress of e-filing in criminal actions and proceedings, containing the recommendations of the Advisory Committee, and recommending additional legislation. This report should devote special attention to whether e-filing in the local criminal courts should be authorized.
- The Chief Administrative Judge's report also should address issues bearing upon the need for courts, district attorneys and others to retain in paper form documents filed with courts or

served upon parties in criminal actions and proceedings, and make appropriate recommendations for changes in existing laws governing retention of paper records.

- Safeguards and restrictions currently existing in e-filing programs in courts of civil jurisdiction should be preserved and extended to new e-filing programs authorized for the criminal courts.
- A lawyer should be permitted to opt out of e-filing without court action by certifying to the clerk of the court that the lawyer lacks the necessary computer hardware, software or technical knowledge to e-file. Alternatively, a lawyer may be exempted from e-filing by the court upon a showing of good cause.
- Unrepresented parties should be automatically exempt from e-filing unless such parties receive permission from the court to participate in e-filing.
- Prior to implementing mandatory or voluntary e-filing programs in any county, the Chief Administrative Judge shall, in addition to any consent requirements, consult with the local bar, District Attorneys, institutional defense service providers, assigned counsel programs, county clerks and other interested members of the criminal justice community.
- The Chief Administrative Judge should maintain and continue to consult with the Advisory Committee to develop court rules implementing e-filing legislation.

B. Upon enactment of legislation as set forth above, the Judiciary recommends promulgation of implementing court rules addressing the following issues:

- Sealing of records in criminal cases. Where a record or part of a record is sealed by statute, rule or court order, such record, where e-filed, shall also be “sealed” in NYSCEF.
- Any document or instrument, such as the accusatory instrument or an order of protection, that is required by law to be served personally on a defendant shall continue to be so served in addition to being e-filed.
- Papers e-filed in criminal actions and proceedings shall not be available for public viewing online. However, as is the case now for paper records, members of the public may view the electronic case file on a computer terminal in the courthouse or county clerk’s office, except for those documents sealed by statute, rule or court order.

VI. CONCLUSION

THE NEW YORK STATE UNIFIED COURT SYSTEM IS FULLY COMMITTED to a future in which the electronic filing of court records becomes the norm in all of the state's trial and appellate courts. The most responsible way to achieve this essential vision for the future of New York's courts is to expand e-filing in an incremental but steady manner that does not cause disruption to litigants, attorneys, state and local governments, and the courts themselves. Indeed, the history of e-filing in New York has been characterized by the Legislature's measured expansion of e-filing, and by the court system's commitment to consultation and cooperation with the practicing bar, county clerks, institutional litigants and others affected by the ongoing transition to e-filing.

With the legislative authorization proposed in this report, permitting e-filing in critical felony matters in a limited number of counties upon the consent of the key stakeholders, the Chief Administrative Judge will be able to move forward significantly in exploring the benefits of e-filing for our state. The legislation proposed in this report will allow the Chief Administrative Judge to focus on those localities where essential stakeholders have demonstrated a strong interest in e-filing. As in the past, development of e-filing programs will take place in close consultation with the affected and interested parties.

After 13 years of growing success in the New York State courts, the immense potential offered by e-filing is becoming increasingly clear. In an era in which government is asked to make ever wiser and more efficient use of limited public resources, the courts must not fail to take much greater advantage of this powerful cost-saving technology. The legislation proposed in this report will enable the court system to take an important step in this direction, allowing the Chief Administrative Judge to establish e-filing programs in superior criminal courts that will provide a reliable basis for evaluating the long-term benefits of e-filing for litigants, attorneys, the courts and state taxpayers. The recommendations in this report are consistent with the ongoing efforts to expand e-filing at a steady, measured pace and will enable the court system to carefully work through the unique issues and problems presented by different courts and areas of law. As in the past, the court system will seek the consent of essential stakeholders where necessary, and otherwise consult and work closely with all affected constituencies — District Attorneys, county clerks, public defenders, government agencies and others — knowing that they are equally interested in realizing the benefits of e-filing.

The success of existing e-filing programs in the New York State courts supports not only the legislation proposed in this report but, ultimately, the broader vision of full-scale implementation of e-filing in the New York courts. In the year 2012, in a state that historically has been a leader in the administration of justice, the time has come for all New Yorkers to embrace this vision with boldness and common sense.

APPENDIX A:

Chapter 543 of the Laws of 2011

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A8368A

SPONSOR: Weinstein

TITLE OF BILL: An act to amend chapter 367 of the laws of 1999, amending the civil practice law and rules and the judiciary law relating to authorization of pilot programs permitting use of facsimile transmission or electronic means to commence an action or special proceeding, in relation to specifying courts and actions in which pilot programs will be authorized to permit use of electronic means to commence an action or proceeding; and to amend chapter 416 of the laws of 2009, amending the civil practice law and rules relating to service of papers by electronic means, in relation to the establishment of advisory committees to implement laws to effect service of papers by electronic means

This measure is proposed by the Chief Judge of the State to improve the efficiency of the trial courts and the administration of justice in this State.

This measure would effectuate a further expansion of the use of electronic means for the filing of certain papers in judicial proceedings ("e-filing"). First authorized by the Legislature as a pilot project 12 years ago for civil cases in Supreme Court in certain counties, see L. 1999, c. 367, over the next decade the Legislature revisited the experiment several times, expanded case categories and venues in which e-filing could be used on a voluntary basis, and repeatedly extended sunsets for the program. In 2009, on the program's 10th anniversary, the Legislature made the voluntary e-filing program permanent while, for the first time, authorizing a pilot program in mandatory e-filing in certain case types and venues, subject to automatic opt-outs for pro se litigants and for attorneys without the equipment or technical wherewithal to participate in the program. See L. 2009, c. 416. Based partly on successful experience with the 2009 statute, in 2010 the Legislature further expanded mandatory e-filing to additional classes of civil proceedings in certain counties. See L. 2010, c. 528.

To date, the Legislature has authorized mandatory e-filing in commercial cases over \$100,000 in New York and Westchester Counties; in tort cases in Westchester County; and in any class or classes of civil cases (other than CPLR Article 78 proceedings, Mental Hygiene Law Article 81 cases, matrimonial actions and Election Law proceedings) in Supreme Court in Livingston, Monroe, Rockland and Tompkins Counties. In practice, and in accordance with this authorization, mandatory e-filing is now operational in New York, Westchester and Rockland Counties. In this measure, we seek a modest expansion of mandatory e-filing in Supreme Court civil cases, and introduction of mandatory e-filing in Surrogate's Court and the New York City Civil Court. We also seek legislative sanction to begin exploring introduction of e-filing in criminal and Family Courts.

PROPOSED E-FILING EXPANSION

The expansion of e-filing proposed in this measure is as follows:

SUPREME COURT, CIVIL

Proposal:

Mandatory e-filing may be required by the Chief Administrative Judge - for both commencement of actions and filing/service in pending actions - in any of the following: (i) commercial cases and other breaches of contract without regard to the amount of damages sought in the counties of New York City; (ii) tort cases in the counties of New York City; and (iii) one or more classes of cases in Livingston, Monroe, Rockland, Tompkins, Allegany, Essex, Onondaga and Westchester Counties, subject to exceptions for CPLR Article 78, MHL Article 81, matrimonial and Election Law proceedings. The Chief Administrative Judge must consult with the bar and get the approval of the local County Clerk before mandatory e-filing may be implemented in counties outside New York City.

SURROGATE'S COURT

Proposal:

Mandatory e-filing may be required by the Chief Administrative Judge - for both commencement of actions and filing/service in pending actions in Surrogate's Court in any county and in any class of cases (at present, consensual e-filing is authorized in Surrogate's Court throughout the State). The Chief Administrative Judge must consult with the bar of a county before mandatory e-filing is required in Surrogate's Court in such county.

NEW YORK CITY CIVIL COURT

Proposal:

Mandatory e-filing may be required by the Chief Administrative Judge - for both commencement of actions and filing/service in pending actions - in no-fault medical provider cases (at present, e-filing is permitted in such cases but only upon consent).

SAFEGUARDS

While we here describe it as "mandatory e-filing"², the new e-filing programs sought in this measure nonetheless have strong built-in safeguards to insure that no litigant or lawyer can be prejudiced for lack of the equipment or technical understanding needed to e-file. These safeguards are the same as those established as part of the limited Supreme Court civil mandatory e-filing program authorized by chapter 416 of the Laws of 2009 and expanded by chapter 528 of the Laws of 2010. Specifically, any pro se litigant in any class of cases in any court in which mandatory e-filing is established is entitled to claim an absolute exemption from having to e-file. No court approval is required. All the litigant need do to secure the exemption is to indicate on a short form to be filed with the court that he or she chooses to opt out of e-filing. Similarly, any attorney in any class of cases in any court in which mandatory e-filing is established is automatically (i.e., with no court approval required) entitled to claim an absolute exemption from having to e-file provided he or she lacks the requisite computer skills or equipment; and he or she so indicates on a form filed with the court. Where a party or lawyer opts-out of e-filing, he or she files papers

with the court and exchanges papers with his or her adversaries by the traditional hard copy means.

To provide further assurance that the mandatory e-filing pilots established by this measure go forward efficiently and without jeopardizing the rights of any parties to litigation, the measure requires that the Chief Administrative Judge consult with affected stakeholders before putting any pilot into effect. The measure continues the existing requirement that the Chief Administrative Judge maintain an advisory committee at least one-half of whose members are County Clerks to assist her in the implementation of mandatory e-filing programs in civil parts in Supreme Court; and further directs that the Chief Administrative Judge create additional advisory committees to assist her in implementing e-filing in Surrogate's Court and the New York City Civil Court. Finally, as was required by the Legislature as part of the first rollout of mandatory e-filing in Supreme Court civil cases in 2009 and 2010, no mandatory e-filing in civil cases in Supreme Court may go forward in any county outside New York City without the agreement of its County Clerk. This requirement is continued and will apply to mandatory e-filing in all of the new counties authorized by this measure as well.

The Chief Administrative Judge's current duty to report to the Legislature, the Governor and the Chief Judge on the e-filing program (i.e., on April 1, 2011 and every April 1st thereafter) would be continued and, in the preparation of such report, the Chief Administrative Judge must continue to be required to consult with the County Clerk in each county in which an e-filing program is implemented for Supreme Court civil cases. Also, all mandatory e-filing programs, existing and newly-proposed, would remain subject to sunset - on September 1, 2015.

Lastly, the measure would direct the Chief Administrative Judge to establish advisory committees to study the potential use of e-filing in criminal and Family Courts. With the assistance of these committees, the Chief Administrative Judge is directed to report findings to the Governor, the Legislature and the Chief Judge of the State by January 1, 2012 and to recommend appropriate legislation.

SUMMARY:

As described above, this measure would modestly enlarge the mandatory e-filing pilot in civil cases in Supreme Court. It also would extend the significant programmatic benefits of mandatory e-filing to cases in Surrogate's Court and a limited class of cases (i.e., no-fault cases involving medical providers) in the New York City Civil Court. E-filing in such cases would inure to the benefit of bench, bar and the litigating public, and promote the administration of justice at a time when all levels of government, particularly the Judiciary, are striving to do more with less. At the same time, this measure would continue New York's longstanding assurance that nothing in the e-filing program -neither voluntary nor mandatory - would impair the substantive rights of any party, with the benefit of the Judiciary's and the bar's now 12 years of experience with exemptions and protections to guarantee access to justice compatibly with technological modernity. Finally, this measure would explore the feasibility of extending e-filing to other courts where it has not yet been applied.

This measure, which would have no fiscal impact, would take effect immediately.

2011 LEGISLATIVE HISTORYOFF: SENATE 5635-A (BONACIC)
JUDICIARY

ASSEMBLY 8368 (M. OF A. WEINSTEIN)
PASSED

FOOTNOTES

{1} The very positive experience in New York to date in the use of e-filing in civil actions in Supreme Court is well-documented in the Chief Administrative Judge's recent report to the Governor, the Chief Judge and the Legislature. A copy of this report ("e-filing in the New York State Courts, June 2011") has been delivered to each member of the Legislature. The report also is available for viewing on line at www.courts.state.ny.us under "What's New".

{2} In the text of the legislation, the term "mandatory e-filing" is not used. Instead, the legislation speaks of the Chief Administrative Judge "eliminating the requirement of consent to participation in the e-filing program." This is to distinguish cases in which e-filing will be necessary from e-filing as it has largely operated since its inception, i.e., as a voluntary program.

STATE OF NEW YORK

8368--A

R. R. 354

2011-2012 Regular Sessions

IN ASSEMBLY

June 14, 2011

Introduced by M. of A. WEINSTEIN, P. RIVERA -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the special order of third reading

AN ACT to amend chapter 367 of the laws of 1999, amending the civil practice law and rules and the judiciary law relating to authorization of pilot programs permitting use of facsimile transmission or electronic means to commence an action or special proceeding, in relation to specifying courts and actions in which pilot programs will be authorized to permit use of electronic means to commence an action or proceeding; and to amend chapter 416 of the laws of 2009, amending the civil practice law and rules relating to service of papers by electronic means, in relation to the establishment of advisory committees to implement laws to effect service of papers by electronic means

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The legislature finds and declares that use of electronic
2 means to commence judicial proceedings and to file and serve papers in
3 pending proceedings ("e-filing") can be highly beneficial to the state,
4 local governments and the public. Accordingly, it is the purpose of this
5 measure to enable a further controlled expansion of e-filing in the
6 civil courts of the state; and to lay the groundwork for an anticipated
7 future introduction of e-filing in criminal and family courts.
8 § 2. The first unnumbered paragraph and clauses (i), (iv), (v), (xi)
9 and (xii) of subparagraph 1, and subparagraphs 2 and 3 of paragraph (B)
10 of subdivision (b) of section 6 of chapter 367 of the laws of 1999,
11 amending the civil practice law and rules and the judiciary law relating
12 to authorization of pilot programs permitting use of facsimile trans-
13 mission or electronic means to commence an action or special proceeding,
14 the first unnumbered paragraph of subparagraph 1, subparagraph 3 as

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD11953-09-1

1 amended by chapter 528 of the laws of 2010 and clauses (i), (iv), (v),
2 (xi) and (xii) of subparagraph 1 and subparagraph 2 as amended by chap-
3 ter 416 of the laws of 2009, are amended and a new clause (xiii) is
4 added to subparagraph 1 to read as follows:

5 The supreme court [~~of~~] in counties within the city of New York [~~and~~
6 ~~Westchester counties~~] in the following classes of cases [~~provided that~~
7 ~~the amount in controversy (exclusive of punitive damages, interest,~~
8 ~~costs, disbursements and counsel fees claimed) is over \$100,000~~]:

9 (i) Breach of contract [~~(regardless of amount in controversy)~~] or
10 fiduciary duty, fraud, misrepresentation, business tort (including but
11 not limited to actions involving claims of unfair competition), or stat-
12 utory and/or common law violation where the breach or violation is
13 alleged to arise out of business dealings (including but not limited to
14 sales of assets or securities; corporate restructuring; partnership,
15 shareholder, joint venture, and other business agreements; trade
16 secrets; restrictive covenants; and employment agreements not including
17 claims that principally involve alleged discriminatory practices);

18 (iv) Shareholder derivative actions[~~, without consideration of the~~
19 ~~monetary threshold~~];

20 (v) Commercial class actions[~~, without consideration of the monetary~~
21 ~~threshold~~];

22 (xi) Dissolution of corporations, partnerships, limited liability
23 companies, limited liability partnerships and joint ventures[~~, without~~
24 ~~consideration of the monetary threshold~~]; [~~and~~]

25 (xii) Applications to stay or compel arbitration and affirm or disaf-
26 firm arbitration awards and related injunctive relief pursuant to arti-
27 cle 75 of the civil practice law and rules involving any of the forego-
28 ing enumerated commercial issues[~~, without consideration of the monetary~~
29 ~~threshold~~]; and

30 (xiii) Breach of contract cases other than those specified in clause
31 (i) of this subparagraph.

32 2. Tort cases in supreme court in [~~Westchester county~~] counties within
33 the city of New York, and

34 3. One or more classes of cases (excluding matrimonial actions as
35 defined by the civil practice law and rules, election law proceedings,
36 proceedings brought pursuant to article 78 of the civil practice law and
37 rules, and proceedings brought pursuant to the mental hygiene law) in
38 supreme court in Livingston, Monroe, Rockland [~~and~~], Tompkins, Allegany,
39 Essex, Onondaga and Westchester counties[~~, and~~], and

40 § 3. Paragraph (B) of subdivision (b) of section 6 of chapter 367 of
41 the laws of 1999, amending the civil practice law and rules and the
42 judiciary law relating to authorization of pilot programs permitting use
43 of facsimile transmission or electronic means to commence an action or
44 special proceeding, is amended by adding two new subparagraphs 4 and 5
45 to read as follows:

46 4. One or more classes of cases in surrogate's court in such counties
47 as the chief administrator shall specify, and

48 5. Actions in the civil court of the city of New York brought by a
49 provider of health care services specified in paragraph (1) of
50 subsection (a) of section 5102 of the insurance law against an insurer
51 for failure to comply with rules and regulations promulgated by the
52 superintendent of insurance pursuant to subsection (b) of section 5108
53 of such law.

54 § 4. The closing paragraph of paragraph (B) of subdivision (b) of
55 section 6 of chapter 367 of the laws of 1999, amending the civil prac-
56 tice law and rules and the judiciary law relating to authorization of

1 pilot programs permitting use of facsimile transmission or electronic
2 means to commence an action or special proceeding, as amended by chapter
3 528 of the laws of 2010, is amended to read as follows:

4 Notwithstanding the foregoing, the chief administrator may not elimi-
5 nate the requirement of consent until after he or she shall have
6 consulted with members of the organized bar and with the county clerk in
7 any county in which such elimination shall apply (where the affected
8 court is the supreme court of a county outside the city of New York),
9 have afforded them the opportunity to submit comments with respect ther-
10 eto, have considered any such comments and, in the instance of the coun-
11 ties specified in subparagraph three of this paragraph, have obtained
12 the agreement thereto of the respective county clerks thereof.

13 § 5. Section 6 of chapter 416 of the laws of 2009 amending the civil
14 practice law and rules relating to service of papers by electronic
15 means, as amended by chapter 528 of the laws of 2010, is amended to read
16 as follows:

17 § 6. (a) Not later than April first in each calendar year, commencing
18 in the year 2011, the chief administrator of the courts shall submit to
19 the legislature, the governor and the chief judge of the state a report
20 evaluating the state's experience with ~~[the program]~~ programs in the use
21 of electronic means for the commencement of ~~[civil]~~ actions and
22 proceedings and the service of papers therein as authorized by ~~[this~~
23 ~~act]~~ law and containing such recommendations for further legislation as
24 he or she shall deem appropriate, including, in particular, legislation
25 to enable broader use of ~~[the program]~~ such programs without the
26 requirement of consent to participation ~~[in the counties specified in~~
27 ~~subparagraphs 1 and 2 of paragraph (D) of subdivision (b) of section 6~~
28 ~~of chapter 367 of the laws of 1999, amending the civil practice law and~~
29 ~~rules and the judiciary law, relating to the authorization of pilot~~
30 ~~programs permitting the use of facsimile transmission or electronic~~
31 ~~means to commence an action or special proceeding, as amended, and in~~
32 ~~counties not now specified in subparagraph 3 of such paragraph (D)]~~. In
33 the preparation of such report, the chief administrator shall consult
34 with each county clerk in whose county ~~[the]~~ a program has been imple-
35 mented in civil cases in the supreme court, the advisory committees
36 established pursuant to subdivisions (b), (c) and (d) of this section,
37 the organized bar including but not limited to city, state, county and
38 women's bar associations; institutional legal service providers; not-
39 for-profit legal service providers; public defenders; attorneys assigned
40 pursuant to article 18-B of the county law; unaffiliated attorneys who
41 regularly appear in proceedings that are or have been affected by any
42 programs that have been implemented or who may be affected by the
43 proposed recommendations for further legislation; representatives of
44 victims' rights organizations; and any other persons in whose county a
45 program has been implemented in any of the courts therein as deemed to
46 be appropriate by the chief administrator, and afford ~~[him or her]~~ them
47 an opportunity to submit comments with respect to such implementation
48 for inclusion in the report and ~~[consider]~~ address any such comments.

49 (b) (1) The chief administrator of the courts shall create an advisory
50 committee to consult with him or her in the implementation of ~~[this act]~~
51 laws affecting the program in the use of electronic means for the
52 commencement of civil actions and proceedings and the service and filing
53 of papers therein in the supreme court. This committee shall consist of
54 such number of members as the chief administrator shall designate, ~~[no]~~
55 among which there shall be representatives of the organized bar includ-
56 ing but not limited to city, state, county and women's bar associations;

1 institutional legal service providers; not-for-profit legal service
2 providers; unaffiliated attorneys who regularly appear in proceedings
3 that are or have been affected by the programs that have been imple-
4 mented or who may be affected by any recommendations for further legis-
5 lation concerning the use of electronic means for the commencement of
6 actions and proceedings and the service and filing of papers therein in
7 the supreme court; and any other persons in whose county a program has
8 been implemented in any of the courts therein as deemed to be appropri-
9 ate by the chief administrator. No fewer than half [to] of the members
10 of this advisory committee shall be upon the recommendation of the New
11 York State Association of County Clerks.

12 (2) The chief administrator shall create an advisory committee to
13 consult with him or her in the implementation of laws affecting the
14 program in the use of electronic means for the commencement of actions
15 and proceedings and the service and filing of papers therein in the
16 surrogate's court. This committee shall consist of such number of
17 members as the chief administrator shall designate, among which there
18 shall be chief clerks of surrogate's courts; representatives of the
19 organized bar including but not limited to city, state, county and
20 women's bar associations; institutional providers of legal services;
21 not-for-profit legal service providers; attorneys assigned pursuant to
22 article 18-B of the county law; unaffiliated attorneys who regularly
23 appear in proceedings that are or have been affected by the programs
24 that have been implemented or who may be affected by any recommendations
25 for further legislation concerning the use of electronic means for the
26 commencement of actions and proceedings and the service and filing of
27 papers therein in the surrogate's court; and any other persons in whose
28 county a program has been implemented in any of the courts therein as
29 deemed to be appropriate by the chief administrator.

30 (3) The chief administrator shall create an advisory committee to
31 consult with him or her in the implementation of laws affecting the
32 program in the use of electronic means for the commencement of actions
33 and proceedings and the service and filing of papers therein in the
34 civil court of the city of New York. This committee shall consist of
35 such number of members as the chief administrator shall designate, among
36 which there shall be the chief clerk of the civil court of the city of
37 New York; representatives of the organized bar including but not limited
38 to city, state, county and women's bar associations; attorneys who regu-
39 larly appear in actions specified in subparagraph 5 of paragraph (B) of
40 subdivision (b) of section 6 of chapter 367 of the laws of 1999; and
41 unaffiliated attorneys who regularly appear in proceedings that are or
42 have been affected by the programs that have been implemented or who may
43 be affected by any recommendations for further legislation concerning
44 the use of electronic means for the commencement of actions and
45 proceedings and the service and filing of papers therein in the civil
46 court of the city of New York; and any other persons as deemed appropri-
47 ate by the chief administrator.

48 (c)(1) The chief administrator shall create an advisory committee to
49 consult with him or her regarding the development of a program relating
50 to the use of electronic means for the commencement of criminal actions
51 and the filing and service of papers in pending criminal actions and
52 proceedings. The committee shall consist of such number of members as
53 will enable the chief administrator to obtain input from those who would
54 be affected by such electronic filing program, and such members shall
55 include county clerks; chief clerks of supreme, county and other courts;
56 district attorneys; not-for-profit legal service providers; public

1 defenders; statewide and local specialty bar associations whose member-
2 ship devotes a significant portion of their practice to assigned crimi-
3 nal cases pursuant to subparagraph (i) of paragraph (a) of subdivision 3
4 of section 722 of the county law; institutional providers of criminal
5 defense services and other members of the criminal defense bar; repre-
6 sentatives of victims' rights organizations; unaffiliated attorneys who
7 regularly appear in proceedings that would be affected by such electron-
8 ic filing program and other interested members of the criminal justice
9 community. Such committee shall help the chief administrator to evaluate
10 the impact of such electronic filing program on litigants including
11 unrepresented parties, practitioners and the courts and to obtain input
12 from those who would be affected by such electronic filing program,
13 including district attorneys, not-for-profit legal service providers,
14 public defenders, statewide and local specialty bar associations whose
15 membership devotes a significant portion of their practice to assigned
16 criminal cases pursuant to subparagraph (i) of paragraph (a) of subdivi-
17 sion 3 of section 722 of the county law, institutional providers of
18 criminal defense services and other members of the criminal defense bar,
19 representatives of victims' rights organizations, unaffiliated attorneys
20 who regularly appear in proceedings that would be affected by such elec-
21 tronic filing program and other interested members of the criminal
22 justice community.

23 (2) No later than January 1, 2012, the chief administrator of the
24 courts shall submit to the legislature, the governor and the chief judge
25 of the state a report of the evaluation including the entities or indi-
26 viduals consulted, the input received, any recommendations of the advi-
27 sory committee to the chief administrator, along with recommendations
28 for legislation authorizing the development of a program relating to the
29 use of electronic means for the commencement of criminal actions and the
30 filing and service of papers in pending criminal actions and
31 proceedings.

32 (d) (1) The chief administrator shall create an advisory committee to
33 consult with him or her regarding the development of a program relating
34 to the use of electronic means for the origination of juvenile delin-
35 quency proceedings under article 3 of the family court act and abuse or
36 neglect proceedings pursuant to article 10 of the family court act in
37 family court and the filing and service of papers in such pending
38 proceedings. The committee shall consist of such number of members as
39 will enable the chief administrator to obtain input from those who would
40 be affected by such electronic filing programs, and such members shall
41 include chief clerks of family courts; representatives of authorized
42 presentment and child protective agencies; other appropriate county and
43 city government officials; institutional providers of legal services for
44 children and/or parents; not-for-profit legal service providers; public
45 defenders; attorneys assigned pursuant to article 18-B of the county
46 law; and other members of the family court bar; representatives of
47 victims' rights organizations; unaffiliated attorneys who regularly
48 appear in proceedings that would be affected by such electronic filing
49 program; and other interested members of the family practice community.
50 Such committee shall help the chief administrator to evaluate the impact
51 of such electronic filing program on litigants including unrepresented
52 parties, practitioners and the courts and to obtain input from those who
53 would be affected by such electronic filing program, including represen-
54 tatives of authorized presentment and child protective agencies, other
55 appropriate county and city government officials, institutional provid-
56 ers of legal services for children and/or parents, not-for-profit legal

1 service providers, public defenders, attorneys assigned pursuant to
2 article 18-B of the county law and other members of the family court
3 bar, representatives of victims' rights organizations, unaffiliated
4 attorneys who regularly appear in proceedings that would be affected by
5 such electronic filing program, and other interested members of the
6 criminal justice community.

7 (2) No later than January 1, 2012, the chief administrator of the
8 courts shall submit to the legislature, the governor and the chief judge
9 of the state a report of the evaluation including the entities or indi-
10 viduals consulted, input received, any recommendations of the advisory
11 committee to the chief administrator, along with recommendations for
12 legislation authorizing the development of a program relating to the use
13 of electronic means for the origination of juvenile delinquency
14 proceedings under article 3 of the family court act and abuse or neglect
15 proceedings pursuant to article 10 of the family court act in family
16 court and the filing and service of papers in such pending proceedings.

17 § 6. Section 7 of chapter 416 of the laws of 2009 amending the civil
18 practice law and rules relating to service of papers by electronic means
19 is amended to read as follows:

20 § 7. This act shall take effect on September 1, 2009; provided, howev-
21 er, that no rule adopted pursuant to paragraph (B) of subdivision (b) of
22 section 6 of chapter 367 of the laws of 1999, as added by section two of
23 this act, shall take effect until at least one hundred eighty days have
24 elapsed after such effective date, and provided that such paragraph (B)
25 shall expire and be deemed repealed September 1, ~~2012~~ 2015.

26 § 7. This act shall take effect immediately; provided, however, that
27 the amendments to paragraph (B) of subdivision (b) of section 6 of chap-
28 ter 367 of the laws of 1999 made by sections two, three and four of this
29 act shall not affect the repeal of such provisions and shall expire and
30 be deemed repealed therewith.

APPENDIX B:

**Legislative proposal authorizing e-filing
in criminal actions and proceedings,
and in Family Court Article 3 and
Article 10 proceedings**

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal

s20 Adams	s44 Farley	s58 Kennedy	s54 Nozzolio	s28 Serrano
s15 Addabbo	s02 Flanagan	s34 Klein	s53 O'Mara	s51 Seward
s55 Alesi	s08 Fuschillo	s26 Krueger	s37 Oppenheimer	s09 Skelos
s11 Avella	s59 Gallivan	s24 Lanza	s21 Parker	s14 Smith
s40 Ball	s12 Gianaris	s39 Larkin	s13 Peralta	s25 Squadron
s42 Bonacic	s22 Golden	s01 LaValle	s30 Perkins	s16 Stavisky
s46 Breslin	s47 Griffo	s52 Libous	s61 Ranzenhofer	s35 Stewart-
s38 Carlucci	s60 Grisanti	s45 Little	s48 Ritchie	Cousins
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s33 Rivera	s49 Valesky
s32 Diaz	s36 Hassell-	s07 Martins	s56 Robach	s57 Young
s17 Dilan	Thompson	s62 Maziarz	s41 Saland	s03 Zeldin
s29 Duane	s10 Huntley	s43 McDonald	s19 Sampson	s27
s31 Espallat	s04 Johnson	s18 Montgomery	s23 Savino	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a107 Crouch	a095 Jaffee	a102 Miller, J.	a118 Russell
a092 Abinanti	a014 Curran	a057 Jeffries	a038 Miller, M.	a144 Ryan
a105 Amedore	a063 Cusick	a135 Johns	a052 Millman	a012 Saladino
a084 Arroyo	a045 Cymbrowitz	a112 Jordan	a015 Montesano	a113 Sayward
a035 Aubry	a034 DenDekker	a099 Katz	a132 Morelle	a029 Scarborough
a124 Barclay	a081 Dinowitz	a074 Kavanagh	a039 Moya	a016 Schimel
a040 Barron	a114 Duprey	a145 Kearns	a003 Murray	a140 Schimminger
a082 Benedetto	a004 Englebright	a065 Kellner	a037 Nolan	a064 Silver
a122 Blankenbush	a054 Espinal	a129 Kolb	a128 Oaks	a027 Simanowitz
a055 Boyland	a071 Farrell	a025 Lancman	a069 O'Donnell	a036 Simotas
a008 Boyle	a123 Finch	a091 Latimer	a051 Ortiz	a100 Skartados
a026 Braunstein	a007 Fitzpatrick	a013 Lavine	a136 Palmesano	a146 Smardz
a044 Brennan	a137 Friend	a050 Lentol	a088 Paulin	a079 Stevenson
a116 Brindisi	a143 Gabryszak	a125 Lifton	a141 Peoples-	a011 Sweeney
a131 Bronson	a090 Galef	a072 Linares	Stokes	a110 Tedisco
a046 Brook-Krasny	a133 Gantt	a127 Lopez, P.	a058 Perry	a115 Tenney
a147 Burling	a077 Gibson	a053 Lopez, V.	a087 Pretlow	a002 Thiele
a117 Butler	a149 Giglio	a001 Losquadro	a073 Quart	a061 Titone
a101 Cahill	a066 Glick	a126 Lupardo	a021 Ra	a031 Titus
a096 Calhoun	a023 Goldfeder	a111 Magee	a097 Rabbitt	a062 Tobacco
a043 Camara	a150 Goodell	a120 Magnarelli	a009 Raia	a148 Walter
a106 Canestrari	a075 Gottfried	a059 Maisel	a006 Ramos	a041 Weinstein
a089 Castelli	a005 Graf	a060 Malliotakis	a134 Reilich	a020 Weisenberg
a086 Castro	a098 Gunther	a030 Markey	a109 Reilly	a024 Weprin
a138 Ceretto	a130 Hanna	a093 Mayer	a178 Rivera, J.	a070 Wright
a033 Clark	a139 Hawley	a019 McDonough	a080 Rivera, N.	a094 Zebrowski
a047 Colton	a083 Heastie	a104 McEneny	a076 Rivera, P.	a103
a010 Conte	a028 Hevesi	a017 McKevitt	a119 Roberts	
a032 Cook	a048 Hikind	a108 McLaughlin	a056 Robinson	
a142 Corwin	a018 Hooper	a022 Meng	a068 Rodriguez	
a085 Crespo	a042 Jacobs	a121 Miller, D.	a067 Rosenthal	

1) Single House Bill (introduced and printed separately in either or both
houses). Uni-Bill (introduced simultaneously in both houses and printed as one
bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed
copies of bill and 4 copies of memorandum in support (single house); or 4 signed
copies of bill and 8 copies of memorandum in support (uni-bill).

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

JUDI *Office of Court Adminis-
tration 93 R-1*
(Authorizes pilot program permitting
use of electronic means for commenc-
ing actions in certain criminal and
family court proceedings)

Actions; electronic commencement

AN ACT

to amend chapter 367 of the laws of
1999, amending the civil practice
law and rules and the judiciary law
relating to authorization of pilot
programs permitting use of facsimile
transmission or electronic means to
commence an action or special
proceeding, in relation to authori-
zation of pilot programs permitting
use of electronic means in certain
courts; and to amend chapter 416 of

the laws of 2009, amending the civil practice law and rules relating to service of papers by electronic means, in relation to development of a program relating to the use of electronic means for the commencement of certain actions; and providing for the repeal of certain provisions of chapter 367 of the laws of 1999 upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Since 1999, the state has steadily expanded its program in
2 the use of electronic means for the commencement of actions and the
3 exchange of legal papers and other documents between parties in
4 proceedings in New York's civil courts. Throughout this expansion, this
5 program has consistently demonstrated success, measured by its reliabil-
6 ity, efficiency, convenience and savings in time and money for the liti-
7 gating public and for the courts.

8 Finding that use of electronic filing in judicial proceedings also is
9 expanding rapidly across the nation, and believing that the benefits
10 heretofore realized in New York through its use in civil proceedings can
11 likewise be realized through its expansion into criminal and family
12 court proceedings, the legislature enacts this measure to provide the
13 necessary authorization.

14 Introduction of electronic filing in the civil court proceedings was
15 begun slowly in New York. This was to ensure that important rights would
16 not be jeopardized as bench and bar gained experience with use of the
17 technologies involved in such filing. The legislature now finds that
18 proceedings in criminal and family courts can present their own unique
19 complications and that, whatever the hopes and expectations may be for a
20 successful deployment of electronic filing in the those courts, it is in
21 the public interest that bench and bar deliberately and carefully
22 explore its use. Accordingly, this act limits the initial authorization
23 for such use. This authorization, in the form of a three-year pilot
24 program, will permit a careful examination by all affected interests to
25 ensure that no rights are prejudiced and that the administration of
26 justice is not in any manner compromised. Under this pilot program,
27 electronic filing may be used in only a limited number of criminal supe-
28 rior courts and family courts, and then only where the chief administra-

1 tor of the courts is satisfied that the circumstances are right for such
2 use. To further ensure that all affected interests are ready and able to
3 participate in the pilot, this act also requires that, while the pilot
4 operates, the principal local interests to be affected -- district
5 attorney, criminal defense bar and county clerk is the criminal courts;
6 authorized presentment agencies and child protective agencies in the
7 family courts -- all acquiesce therein.

8 § 2. Chapter 367 of the laws of 1999, amending the civil practice law
9 and rules and the judiciary law relating to authorization of pilot
10 programs permitting use of facsimile transmission or electronic means to
11 commence an action or special proceeding, is amended by adding two new
12 sections 6-a and 6-b to read as follows:

13 § 6-a. (a) Notwithstanding any other provision of law, the chief
14 administrator of the courts, with the approval of the administrative
15 board of the courts, may promulgate rules authorizing a program in the
16 use of electronic means in the supreme court and in the county court
17 for: (1) the filing with a court of an accusatory instrument for the
18 purpose of acquiring jurisdiction in a superior court, as provided by
19 articles 195 and 200 of the criminal procedure law, and (2) the filing
20 and service of papers in pending criminal actions and proceedings.

21 (b)(1) Except as otherwise provided in this subdivision, participation
22 in this program shall be strictly voluntary and will take place only
23 upon consent of all parties in the criminal action or proceeding; except
24 that a party's failure to consent to participation shall not bar any
25 other party to the action from filing and serving papers by electronic
26 means upon the court or any other party to such action or proceeding who
27 has consented to participation. Filing an accusatory instrument by elec-
28 tronic means with the court for the purpose of conferring jurisdiction

1 over a criminal action upon such court shall not require the consent of
2 any other party.

3 (2) The chief administrator may eliminate the requirement of consent
4 to participation in this program in supreme and county courts of not
5 more than six counties provided he or she may not eliminate such
6 requirement for a court without the consent of the district attorney,
7 the criminal defense bar (as represented by the head of a legal aid
8 society, public defender or president of a local bar association, as
9 appropriate) and the county clerk of the county in which such court
10 presides.

11 (c) Where the chief administrator eliminates the requirement of
12 consent as provided in paragraph (2) of subdivision (b) of this section,
13 he or she shall shall afford counsel the opportunity to opt out of the
14 program, via presentation of a prescribed form to be filed with the
15 court where the criminal action is pending. Said form, which shall not
16 be part of the case record, shall permit an attorney to opt out of
17 participation in the program under any of the following circumstances,
18 in which event, he or she will not be compelled to participate:

19 (1) Where the attorney certifies in good faith that he or she lacks
20 the computer hardware and/or connection to the internet and/or scanner
21 or other device by which documents may be converted to an electronic
22 format; or

23 (2) Where the attorney certifies in good faith that he or she lacks
24 the requisite knowledge in the operation of such computers and/or scan-
25 ners necessary to participate. For the purposes of this paragraph, the
26 knowledge of any employee of an attorney, or any employee of the attor-
27 ney's law firm, office or business who is subject to such attorney's
28 direction, shall be imputed to the attorney.

1 Notwithstanding the foregoing: (i) where a party is not represented
2 by counsel, he or she may not participate in the program except upon
3 permission of the court; and (ii) a court may exempt any attorney from
4 being required to participate in the program upon application for such
5 exemption, showing good cause therefor.

6 (d) For purposes of this section, "electronic means" shall be as
7 defined in subdivision (f) of rule 2103 of the civil practice law and
8 rules.

9 (e)(1) Nothing in this section shall affect or change any existing
10 laws governing the sealing and confidentiality of court records in crim-
11 inal proceedings, nor shall this section be construed to compel a party
12 to file a sealed document by electronic means.

13 (2) Notwithstanding any other provision of this section, no paper or
14 document that is filed by electronic means in a criminal proceeding in
15 supreme court or county court shall be available for public inspection
16 on-line; provided, however, that this paragraph shall not prohibit the
17 chief administrator, in the exercise of his or her discretion, from
18 posting papers or documents that have not been sealed pursuant to law on
19 a public website maintained by the unified court system where: (i) the
20 website is not the website established by the rules promulgated pursuant
21 to subdivision (a) of this section, and (ii) to do so would be in the
22 public interest.

23 § 6-b. (a) Notwithstanding any other provision of law, the chief
24 administrator of the courts, with the approval of the administrative
25 board of the courts, may promulgate rules authorizing a program in the
26 use of electronic means in the family court for: (1) the origination of
27 proceedings in such court, and (2) the filing and service of papers in
28 pending proceedings.

1 (b) (1) Except as otherwise provided in this subdivision, partic-
2 ipation in this program shall be strictly voluntary and will take place
3 only upon consent of all parties in the proceeding; except that a
4 party's failure to consent to participation shall not bar any other
5 party from filing and serving papers by electronic means upon the court
6 or any other party to such proceeding who has consented to partic-
7 ipation. Filing a petition with the court by electronic means for the
8 purpose of originating a proceeding shall not require the consent of any
9 other party.

10 (2) In the rules promulgated pursuant to subdivision (a) of this
11 section, the chief administrator may eliminate the requirement of
12 consent to participation in this program in family courts of not more
13 than six counties for:

14 (i) the filing with the court of a petition originating a juvenile
15 delinquency proceeding under article 3 of the family court act by a
16 presentment agency as defined in section 301.2 of such act;

17 (ii) the filing with the court of a petition originating a proceeding
18 to determine abuse or neglect pursuant to article 10 of the family court
19 act by a child protective agency, as defined in section 1012 of such
20 act; and

21 (iii) the filing and service of papers in proceedings specified in
22 subparagraphs (i) and (ii) of this paragraph where, pursuant to such
23 subparagraphs, such proceedings were originated in the court by elec-
24 tronic filing.

25 Notwithstanding the foregoing, the chief administrator may not elimi-
26 nate the requirement of consent to participation without the consent of
27 each authorized presentment agency and child protective agency of an
28 affected county.

1 (c) Where the chief administrator eliminates the requirement of
2 consent as provided in paragraph 2 of subdivision (b) of this section,
3 he or she shall afford counsel the opportunity to opt out of the
4 program, via presentation of a prescribed form to be filed with the
5 clerk of the court where the proceeding is pending. Said form, which
6 shall not be part of the case record, shall permit an attorney to opt
7 out of participation in the program under any of the following circum-
8 stances, in which event, he or she will not be compelled to participate:

9 (1) Where the attorney certifies in good faith that he or she lacks
10 the computer hardware and/or connection to the internet and/or scanner
11 or other device by which documents may be converted to an electronic
12 format; or

13 (2) Where the attorney certifies in good faith that he or she lacks
14 the requisite knowledge in the operation of such computers and/or scan-
15 ners necessary to participate. For the purposes of this paragraph, the
16 knowledge of any employee of an attorney, or any employee of the attor-
17 ney's law firm, office or business who is subject to such attorney's
18 direction, shall be imputed to the attorney.

19 Notwithstanding the foregoing: (i) where a party is not represented by
20 counsel, he or she may not participate in the program except upon
21 permission of the court; and (ii) a court may exempt any attorney from
22 being required to participate in the program upon application for such
23 exemption, showing good cause therefor.

24 (d) For purposes of this section, "electronic means" shall be as
25 defined in subdivision (f) of rule 2103 of the civil practice law and
26 rules.

1 (e) Notwithstanding any provision of this section, no paper or docu-
2 ment that is filed by electronic means in a proceeding in family court
3 shall be available for public inspection on-line.

4 § 3. Subparagraphs 1 and 2 of paragraph (B) of subdivision (b) of
5 section 6 of chapter 367 of the laws of 1999, amending the civil prac-
6 tice law and rules and the judiciary law relating to authorization of
7 pilot programs permitting use of facsimile transmission or electronic
8 means to commence an action or special proceeding, are REPEALED, subpara-
9 graphs 3, 4 and 5 of such paragraph (B) are renumbered to be subpara-
10 graphs 1, 2 and 3 and subparagraph 1, as amended by chapter 543 of the
11 laws of 2011 and as renumbered by this section, is amended to read as
12 follows:

13 1. One or more classes of cases (excluding matrimonial actions as
14 defined by the civil practice law and rules, election law proceedings,
15 proceedings brought pursuant to article 78 of the civil practice law and
16 rules, and proceedings brought pursuant to the mental hygiene law) in
17 supreme court in Livingston, Monroe, Rockland, Tompkins, Allegany,
18 Essex, Onondaga, Suffolk and Westchester counties and in the counties
19 within the city of New York, and

20 § 4. Subdivisions (c) and (d) of section 6 of chapter 416 of the laws
21 of 2009, amending the civil practice law and rules relating to service
22 of papers by electronic means, as added by chapter 543 of the laws of
23 2011, are amended to read as follows:

24 (c)(1) The [chief administrator shall create an] advisory committee to
25 consult with [him or her] the chief administrator regarding the develop-
26 ment of a program relating to the use of electronic means for the
27 commencement of criminal actions and the filing and service of papers in
28 pending criminal actions and proceedings is continued. The committee

1 shall consist of such number of members as will enable the chief admin-
2 istrator to obtain input from those who are or would be affected by such
3 electronic filing program, and such members shall include county clerks;
4 chief clerks of supreme, county and other courts; district attorneys;
5 not-for-profit legal service providers; public defenders; statewide and
6 local specialty bar associations whose membership devotes a significant
7 portion of their practice to assigned criminal cases pursuant to subpar-
8 agraph (i) of paragraph (a) of subdivision 3 of section 722 of the coun-
9 ty law; institutional providers of criminal defense services and other
10 members of the criminal defense bar; representatives of victims' rights
11 organizations; unaffiliated attorneys who regularly appear in
12 proceedings that are or would be affected by such electronic filing
13 program and other interested members of the criminal justice community.
14 Such committee shall help the chief administrator to evaluate the impact
15 of such electronic filing program on litigants including unrepresented
16 parties, practitioners and the courts and to obtain input from those who
17 are or would be affected by such electronic filing program, including
18 district attorneys, not-for-profit legal service providers, public
19 defenders, statewide and local specialty bar associations whose member-
20 ship devotes a significant portion of their practice to assigned crimi-
21 nal cases pursuant to subparagraph (i) of paragraph (a) of subdivision 3
22 of section 722 of the county law, institutional providers of criminal
23 defense services and other members of the criminal defense bar, repre-
24 sentatives of victims' rights organizations, unaffiliated attorneys who
25 regularly appear in proceedings that are or would be affected by such
26 electronic filing program and other interested members of the criminal
27 justice community.

1 (2) No later than January 1, [2012] 2015, the chief administrator of
2 the courts shall submit to the legislature, the governor and the chief
3 judge of the state a report of the evaluation including the entities or
4 individuals consulted, the input received, any recommendations of the
5 advisory committee to the chief administrator, along with recommenda-
6 tions for legislation [authorizing the development of a program relat-
7 ing] in relation to the use of electronic means for the commencement of
8 criminal actions and the filing and service of papers in pending crimi-
9 nal actions and proceedings. This report shall devote special attention
10 to the question whether such use of electronic means shall be authorized
11 in the local criminal courts of the state. In the report, the chief
12 administrator also shall address issues that bear upon the need for the
13 courts, district attorneys and others to retain papers filed with courts
14 or served upon parties in criminal proceedings where electronic means
15 can or have been used and make recommendations for such changes in laws
16 requiring retention of such papers as to the chief administrator may
17 seem appropriate.

18 (d) (1) The [chief administrator shall create an] advisory committee
19 to consult with [him or her] the chief administrator regarding the
20 development of a program relating to the use of electronic means for the
21 origination of juvenile delinquency proceedings under article 3 of the
22 family court act and abuse or neglect proceedings pursuant to article 10
23 of the family court act in family court and the filing and service of
24 papers in such pending proceedings is continued. The committee shall
25 consist of such number of members as will enable the chief administrator
26 to obtain input from those who are or would be affected by such elec-
27 tronic filing [programs] program, and such members shall include chief
28 clerks of family courts; representatives of authorized presentment and

1 child protective agencies; other appropriate county and city government
2 officials; institutional providers of legal services for children and/or
3 parents; not-for-profit legal service providers; public defenders;
4 attorneys assigned pursuant to article 18-B of the county law; and other
5 members of the family court bar; representatives of victims' rights
6 organizations; unaffiliated attorneys who regularly appear in
7 proceedings that are or would be affected by such electronic filing
8 program; and other interested members of the family practice community.
9 Such committee shall help the chief administrator to evaluate the impact
10 of such electronic filing program on litigants including unrepresented
11 parties, practitioners and the courts and to obtain input from those who
12 are or would be affected by such electronic filing program, including
13 representatives of authorized presentment and child protective agencies,
14 other appropriate county and city government officials, institutional
15 providers of legal services for children and/or parents, not-for-profit
16 legal service providers, public defenders, attorneys assigned pursuant
17 to article 18-B of the county law and other members of the family court
18 bar, representatives of victims' rights organizations, unaffiliated
19 attorneys who regularly appear in proceedings that are or would be
20 affected by such electronic filing program, and other interested members
21 of the criminal justice community.

22 (2) No later than January 1, [2012] 2015, the chief administrator of
23 the courts shall submit to the legislature, the governor and the chief
24 judge of the state a report of the evaluation including the entities or
25 individuals consulted, input received, any recommendations of the advi-
26 sory committee to the chief administrator, along with recommendations
27 for legislation [authorizing the development of a program relating] in
28 relation to the use of electronic means for the origination of juvenile

1 delinquency proceedings under article 3 of the family court act and
2 abuse or neglect proceedings pursuant to article 10 of the family court
3 act in family court and the filing and service of papers in such pending
4 proceedings.

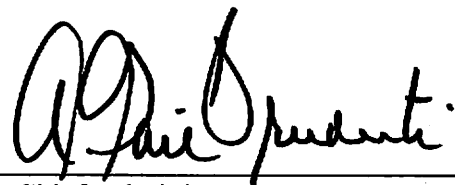
5 § 5. This act shall take effect immediately; provided, however, that
6 sections 6-a and 6-b of chapter 367 of the laws of 1999, as added by
7 section two of this act, shall expire and be deemed repealed September
8 1, 2015; and provided further that the amendments made to paragraph (B)
9 of subdivision (b) of section 6 of chapter 367 of the laws of 1999 made
10 by section three of this act shall not affect the expiration and repeal
11 of such provisions and shall be deemed to be repealed therewith.

APPENDIX C:

Consensual and mandatory e-filing programs in New York

**ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, and in consultation with the Presiding Justices of the Appellate Divisions and, as appropriate, in consultation with or with the approval of County Clerks, I hereby establish or continue programs for the voluntary and mandatory use of electronic means for the filing and service of documents (“e-filing”) in the manner authorized pursuant to L. 1999, c. 367, as amended by L. 2009, c. 416, L. 2010, c. 528, and L. 2011, c. 543, in the counties, courts, and cases, and upon the effective dates set forth in Appendix A (voluntary e-filing) and Appendix B (mandatory e-filing) attached hereto. Such programs shall be subject to sections 202.5-b, 202.5-bb, 206.5, 206.5-aa, 207.4-a, 207.4-aa, and 208.4-a of the Uniform Rules for the New York State Trial Courts.

A handwritten signature in black ink, appearing to read "A. J. Spadaro", is written over a horizontal line.

Chief Administrative Judge of the Courts

Dated: January 12 , 2012

AO/245/12

APPENDIX A
 CONSENSUAL/VOLUNTARY CASES
 (Effective January 17, 2012,
 unless otherwise indicated)

County	Courts	Case Types
Albany, Niagara, and Suffolk	Supreme Court	Commercial, Contract, Tort and Tax Certiorari actions, including proceedings under Section 730 of the Real Property Tax Law; and foreclosure actions addressing real property and mechanics' liens.
Bronx, Erie, Kings, Queens, Richmond, and Westchester	Supreme Court	Commercial, Contract, Tort and Tax Certiorari actions, including proceedings under Section 730 of the Real Property Tax Law; foreclosure actions addressing real property and mechanics' liens; and Workers' Compensation applications for judgment.
Broome	Supreme Court	Commercial, Contract, Tort and Tax Certiorari actions; foreclosure actions addressing real property and mechanics' liens; Workers' Compensation applications for judgment; CPLR Art. 78 proceedings; CPLR Art. 75 proceedings; guardianship, matrimonial, and mental hygiene matters.

Nassau	Supreme Court	Commercial, Contract and Tort actions; proceedings under Section 730 of the Real Property Tax Law; and Workers' Compensation applications for judgment.
New York	Supreme Court	Commercial, Contract, Tort and Tax Certiorari actions, including proceedings under Section 730 of the Real Property Tax Law; foreclosure actions addressing real property and mechanics' liens; Workers' Compensation applications for judgment; and Department of Health applications for judgment.
Onondaga	Supreme Court	Commercial, Contract, Tort, and Tax Certiorari actions. (Effective: 2/28/12).
Cayuga, Chautauqua, Erie, Livingston, Monroe, Ontario, Queens, Seneca, Steuben, Wayne, and Yates	Surrogate's Court	Probate and administration proceedings; miscellaneous proceedings related thereto; and such other types of proceedings as the court may permit.
Albany District (Albany, Clinton, Columbia, Essex, Franklin, Greene, Rensselaer, Saratoga, Schenectady, Ulster, Warren, and Washington Counties)	Court of Claims	Claims falling within a category or categories designated by the Presiding Judge of the Court of Claims.

New York City	Civil Court	Actions brought by a provider of health services specified in Insurance Law § 5102 (a) (1) against an insurer for failure to comply with rules and regulations promulgated by the Superintendent pursuant to Section 5108 (b) of such Law.
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Cases listed in Appendix A do not include any cases that are covered by Appendix B.

**APPENDIX B
MANDATORY CASES
(Effective January 17, 2012,
unless otherwise indicated)**

County	Courts	Case Types and Effective Dates
New York	Supreme Court	<p>Commercial actions where amount in controversy exceeds \$100,000. (Effective through: 2/26/2012).</p> <p>Commercial actions without regard to amount in controversy. (Effective: 2/27/2012).</p> <p>Contract actions. (Effective: 2/27/2012).</p> <p>Tort actions. (Effective: 2/27/2012).</p>
Westchester	Supreme Court	All actions (except CPLR Art. 78 and election law proceedings, and matrimonial and Mental Hygiene Law matters).
Rockland	Supreme Court	All actions (except CPLR Art. 78 and election law proceedings, and matrimonial and Mental Hygiene Law matters).
Kings	Supreme Court	Commercial actions where the amount in controversy equals or exceeds \$75,000 (Commercial Division matters). (Effective: 2/27/2012).

Bronx	Supreme Court	Medical malpractice actions. (Effective: 2/27/2012).
Chautauqua, Erie, and Monroe	Surrogate's Court	Probate and administration proceedings and miscellaneous proceedings related thereto. (Effective: 3/1/2012).

DEFINITIONS APPLICABLE TO MANDATORY E-FILING OF COMMERCIAL, CONTRACT, AND TORT ACTIONS IN NEW YORK AND KINGS COUNTIES

On or after February 27, 2012, for purposes of mandatory e-filing in commercial, contract, and tort actions newly filed in New York County, or commercial cases newly filed in Kings County, the following definitions, restrictions, and conditions shall apply:¹

(a) "Commercial actions" shall mean actions, not otherwise excluded in paragraph (b), which assert or address at least one of the following claims or transactions:

- (1) breach of contract or breach of fiduciary duty, fraud, misrepresentation, business tort, or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (but excluding claims principally involving alleged discriminatory practices);
- (2) transactions governed by the Uniform Commercial Code (excluding those concerning individual cooperative or condominium units) or involving commercial real property, including Yellowstone injunctions and excluding actions for the payment of rent only;
- (3) shareholder derivative and commercial class actions;
- (4) business transactions involving commercial banks and other financial institutions, internal affairs of business organizations, or commercial or environmental insurance coverage;
- (5) malpractice by accountants or actuaries, or by attorneys in commercial representations; and
- (6) dissolution of business organizations and applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief involving any of the foregoing commercial issues.

¹ If any definition, restriction or condition set forth in this Administrative Order conflicts with L. 1999, c. 367, as amended by L. 2009, c. 416, L. 2010, c. 528, or L. 2011, c. 543, or sections 202.5-b and 202.5-bb of the Uniform Rules for the Trial Courts, the statutory provision or Uniform Rule shall apply.

(b) “Commercial actions” shall not include the following: actions to collect professional fees actions seeking a declaratory judgment as to insurance coverage for personal injury or property damage; residential real estate disputes, and commercial real estate disputes involving the payment of rent only; proceedings to enforce any kind of judgment; first-party insurance claims and actions by insurers to collect premiums or rescind non-commercial policies; or attorney malpractice claims not included in paragraph (a) (5) above.

(c) “Contract actions” shall mean actions, other than those listed in paragraphs (a) and (b), in which at least one claim of breach of contract is asserted, irrespective of the amount in controversy.

(d) “Tort actions” shall mean actions, other than those listed in paragraphs (a) and (b), that seek only monetary damages and assert at least one claim that arises out of or alleges:

- (1) a motor vehicle accident, product liability, injury to person or property from tortious conduct, wrongful death, mass tort, and medical, dental or podiatric malpractice;
- (2) other professional malpractice;
- (3) damages to persons or property from environmental conditions; and
- (4) negligence, defamation, intentional infliction of emotional distress or other intentional harm.

APPENDIX D:

Written commentary of Advisory Committee members and interested organizations

Dear Mr. Younkens:

After talking with several members of my office, I would respectfully suggest that the e-filing program be confined to County Court and the Criminal Division of Supreme Court, at least until Justice Courts become better equipped with the infrastructure necessary to handle e-filing.

I would also suggest that accusatory instruments generated by police officers, sealed indictments, Search Warrant Applications, Search Warrants, and Search Warrant Returns, and any other investigative order (GPS orders, for example), default to being exempt from e-filing for witness security reasons, at least for the time being. Grand Jury Minutes should always be exempt from e-filing, unless the system can reliably seal them and automatically purge them as necessary.

Please let me know if you would like me to elaborate on any of these comments.

Victoria M. White
1/9/2012

Dear Sir:

1. Over the next few days I will be calling a couple of other state's courts that have done e-filing in criminal cases (Texas and Florida) to tap into their experience. The questions that immediately strike my brain:

1) I know back in my prosecutorial days, and in particular, my organized crime investigation days, there is no way in the world I would have EVER agreed to an open wiretap investigation having the eavesdropping warrant papers available anywhere in a court's computer system (and, depending on the case, a search warrant application), no matter what the degree of security.

2) And I am always a little uncertain about security, under the belief that no system is ever truly secure, which impacts greatly on my #1 concern, but to a lesser extent toward information that should be sealed getting leaked when hackers are successful (which is why I'm looking forward to talking to Texas and Florida).

3) This is a VERY minor concern compared to #1 and #2, but I might as well raise it. It will be annoying to prosecutors (at least it would have been for me I guess) to have to check out which attorneys accept e-filing and which do not. Will be interested in hearing how that is manageable. As I develop other questions and concerns, I will forward them to you.

Stephen Treglia

1/18/2012

Dear Judge Coccoma and Ron Younkins,

As a member of the Chief Administrative Judge's Advisory Committee on E-filing in Criminal Court, I participated on behalf of NYSDA in a number of conference calls and saw a demo of the current New York State Courts Electronic Filing (NYSCEF) system. From this work on the Advisory Committee, it is my understanding that:

E-filing in criminal and family courts will not be implemented on a statewide basis until it is tested in a small number of counties on a pilot basis.

E-filing in criminal courts would initially only apply to felony prosecutions in Superior Courts.

Implementation on a pilot basis will be carefully evaluated and OCA will report on the pilot program to the Legislature prior to expansion.

Prior to authorizing implementation of e-filing in a county, the Chief Administrative Judge will consult with all affected stakeholders, include public defense providers.

Participation in e-filing would be consensual or mandatory, and if mandatory, participation would still afford the ability for some attorneys to opt-out if they lacked the necessary hardware, software or technical expertise to participate. In addition, recent amendments to e-filing rules provide for emergency exceptions to e-filing where technical problems, including problems with the filer's equipment or Internet connection, prevent timely filing.

Eventual e-filing legislation would explicitly provide that any instrument or document, such as accusatory instruments or orders of protection, required by law to be served personally on a defendant, would continue to be served in person.

E-filed documents would not be available for public viewing online, only counsel would have online access, and such filings could be viewed by the public at the courthouse where the documents were filed or where the criminal matter is pending.

Where papers are to be sealed or made confidential pursuant to statute, rule or court order, the e-filing system would have the capacity for filing such documents as sealed or confidential. Similarly, if *ex parte* applications are filed, such as County Law § 722-c applications, the e-filed document and the fact of its filing will be unavailable for viewing online by any other party.

Unrepresented parties would be automatically exempt from e-filing.

In view of the above findings, NYSDA would support efforts to explore expansion of e-filing in criminal courts. We recognize, however, that for many defender offices the implementation of e-filing will pose practical and technical challenges that need to be considered if implementation is to be successful. E-filing of court documents will necessitate greater reliance on office information technology, which is not robust in many defender offices. Many offices have older, underpowered computers, slow computer networks, limited Internet connectivity, and minimal IT support services, all of which will be an impediment to the creation and management of digital case files. Rather than merely filing paper copies of documents in physical case file folders, offices will need to create a system for downloading and saving e-filed documents. Also, office email systems will need to become more integral to case management practices with the advent of e-filing.

In addition, notwithstanding e-filing, defender offices will still have to routinely print court documents that were previously served in hard copy so that they can be reviewed by defense counsel and provided to their clients. We also have some concern that courts could require defender offices to routinely file “working copies” of documents e-filed. [See, e.g., Part 207.4-a (e)(11)]. The true extent of this additional document processing should be made clear to defender offices, particularly those handling a high-volume caseload.

Anticipating that e-filing will require defender offices to create and implement office policies concerning electronic document management, digital case files and file retention, NYSDA hopes to actively participate in criminal court e-filing pilot programs so that we can develop additional technical expertise that would benefit other defender programs as e-filing expands across the state.

Sincerely,

Charles F. O'Brien

Managing Attorney

New York State Defenders Association

2/27/2012

Dear Judge Coccoma and Mr. Younkings:

As a member of the Chief Administrative Judge's Advisory Committee on E-filing in Criminal Court, I write to address some concerns I have regarding the implementation of e-filing and its potential impact upon large institutional defense providers. I am cognizant of the fact that the Committee is recommending that any criminal court e-filing requirement begin with a pilot program of e-filing documents in cases filed in superior court. However, it is likely that e-filing will eventually be expanded to include all OCA criminal courts and (perhaps) eventually the town and village justice courts. Should e-filing be expanded to include all criminal court filings, the ramifications for institutional defender offices would be significant. Although I am supportive of e-filing, I want to underscore the fact that e-filing in the criminal courts will require institutional offices to devote resources to its implementation in order to ensure its effectiveness. I would note that institutional defense providers currently struggle to obtain the necessary funding to adequately provide services to their clients, and a requirement to implement e-filing, without an additional commitment of funding from either the state or local governments, will result in a significant burden on these offices. The Monroe County Public Defender's Office is an office of 62 attorneys that provide representation in the criminal, family, and appellate courts of Monroe County. Last year the office handled over 25,000 cases (approximately 22,000 criminal cases [17,000 in OCA courts, 5,000 in the town and village courts] and 3000 family court cases). Currently 48 office attorneys are assigned to the criminal bureaus of the office (there are only five secretaries supporting those attorneys). The average caseload of each of those attorneys varies, depending upon the bureau to which they are assigned. For example, the attorneys assigned to our city court (Rochester) bureau handle approximately 700-900 misdemeanor cases per year, and non-violent felony attorneys in this office handle approximately 225 cases per year. Based upon the volume of cases handled by this office I am concerned about the resources needed to implement e-filing. Although e-filing in superior courts could be implemented in this office without significant disruption or added resources, expanding e-filing to include all criminal cases (or only city court cases) would result in a need for additional resources the County of Monroe is unlikely to provide. These resources would include: 1. additional support staff to scan and/or convert to .pdf all documents and upload those documents into NYSCEF, and download documents that have been served by the People (and

copy same to provide a file copy and client copy); 2. additional high speed scanners/ copiers; 3. greater IT resources to handle scanned imaging; 4. modifications to office's case management system to integrate e-filing system-wide. Additionally, I would note that should e-filing be expanded to include all filings in criminal courts NYSCEF would need to be robust enough to efficiently handle the transfer of cases (in the NYSCEF system) between attorneys in large offices. It is common for this office to have to transfer cases from one attorney to another due to attorneys resigning from the office, taking a leave of absence for medical leave, or transferring to another bureau. Our current case management system is capable of automatically transferring those cases to a new attorney quickly. However, I was told during a recent committee conference call that this could be done in NYSCEF only through a letter application to the office that oversees NYSCEF. This is impracticable. As an example, if one of the city court attorneys in this office needs to take a leave of absence I would need to transfer potentially 500-600 cases to another attorney. This transfer would need to be accomplished in NYSCEF immediately so that the "new" attorney would not miss any filings or notices served by the People. I understand that NYSCEF also allows additional attorneys to be notified of a filing, but our supervisory staff is simply too busy to check for e-mailed notices of document filings for each of the cases handled by their staff (for instance, our city court supervisor - who also carries a 50% violent felony caseload -- oversees a staff of fourteen attorneys who handle collectively 13,000 cases per year.) I would suggest that in its Report, the Committee should recommend that e-filing should not be authorized in misdemeanor criminal actions until the above issues are addressed. Thank you for the opportunity to participate on the Committee and provide input on the potential implementation of e-filing in the criminal courts.

Timothy P. Donaher
Monroe County Public Defender
3/1/2012

Dear Judge Coccoma and Ron,

On behalf of the Office of Indigent Legal Services, I would first like to endorse and join in the comments already submitted by Charlie O'Brien on behalf of the New York State Defenders Association and Tim Donaher, the Monroe County Public Defender. These comments highlight a risk that implementation of mandatory e-filing without careful attention to the provision of adequate human and technological resources for institutional criminal justice service providers could have the unintended effect of imposing greater burdens on these already overextended and under-resourced entities; and the same or more could be said about its potential impact upon solo or small firm providers of criminal defense services under County Law article 18-B.

My office is at an early stage of assessing the quality of representation and the resources available to the providers of county-based criminal defense (and parent representation) providers. Our analysis of the available caseload data and our assessment of the resources afforded to these providers reveal a chronically under-resourced and overloaded system whose inadequacy of resources is exceeded, perhaps, only by the paucity of its expectations. It is hard to find evidence of significant improvement since the devastating findings issued more than five years ago in the Final Report to then-Chief Judge Kaye by the Commission on the Future of Indigent Defense Services. One way to put this concern is to say that if the relatively well-established and effective Monroe County public defender's office has legitimate and reasonable concerns about its ability to transition into an era of widespread criminal case e-filing, then we should stop and give serious consideration to what entering that new world might mean for much less established and well-resourced providers across the state.

The draft report constitutes an impressive and thoughtful effort to ensure that the necessary and generally promising development of electronic filing in criminal cases will occur gradually, and only with full communication and appropriate safeguards at every step along the way. In keeping with the observations I have made above, I would propose two amendments to the Advisory Committee Commentary (part IV), and one to the Recommendations for Legislation (part V).
Advisory Committee Commentary:

1) First paragraph: I propose placing a period after the word "system" in line 3; striking the word "and";

and inserting “If e-filing is phased in very gradually as intended, and if criminal defense and prosecution providers are afforded the additional resources they may require to adapt to its implementation, e-filing can” [result in cost-savings, etc.]

2) Fourth paragraph (first full paragraph on page 13): I propose striking the period at the end of the paragraph, inserting a comma and the words “and to ensure that criminal defense and prosecution providers have been furnished with sufficient resources to adapt to this expansion.”

Recommendations for Legislation:

1) Second recommendation: I propose inserting, after the word “authorized” in line two, and before the balance of the sentence, the words “in misdemeanor cases or”.

Thank you for considering these thoughts.

William J. Leahy

Director

Office of Indigent Legal Services

3/1/2012

Judge Coccoma and Mr. Galvao,

Thanks for all the materials ---they were helpful in preparing for this afternoon's conference call. I am taking you up on the invitation to submit written comments in advance of the final draft of the report and recommendations. Since the short term focus will be on e-filing in superior courts, I will save most of my thoughts on local courts for another day. I am extremely excited about the prospect and potential of e-filing and e-records retention in criminal cases. The problem solving opportunities presented are neither unsurprising nor insurmountable and I look forward enthusiastically to working with the committee as it assists the Chief Judge and Administrative Board. With that in mind, here are some observations which flow from today's meeting that I'd like to share:

1. I'm not sure I understand the concerns relating to discovery since CPL 240.20 and 240.30 do not mandate service of discovery/Rosario materials on the court. a. Obviously, as to Brady material under CPL 240.20(1)(h) a prosecutor would be wise to perfect the record by at the very least copying the court into a cover letter to defense counsel indicating that unspecified Brady or Agurs material has been provided to counsel. b. As to other non-constitutionally-compelled discovery, a filing with the court is not contemplated unless there is a motion for a protective order or a motion to compel. I would think that such motions would be subject to e-filing and that the lawyers filing would be adept arguing their positions without disclosing sensitive material. If the court felt it could not decide the issue without viewing exhibits or ordering an in camera review, it could order either as it presently does regarding Darden issues without the sensitive material being subject to e-filing. c. While I think all of those concerns could be addressed by court rule, it may be that as the sunset period for e-filing in criminal cases approaches, that a new CPL section (CPL 240.95) could be enacted to cover such discovery issues which the Legislature and Governor agree should be universal.
2. Since it might be argued that CPL articles 690, 700 and 705 don't adequately cover GPS applications, any court rule should clearly state that such applications are "sealed."
3. Since in some situations the parties may be aware of a material witness order while in others they may not [i.e. GJ cases - CPL 620.20.(2)(b)], the rules should probably address the nuances of those cases specifically.
4. There is little excuse for a prosecutor not knowing about CPL 710.30 issues on cases presented to a grand jury and so I see little reason why such notices cannot be part of the e-filing system. The Monroe County District Attorney's Office has for decades attached the notices to indictments to

comply with the 15 day rule and avoid preclusion. I also see no reason why CPL Article 250 notices of defenses should not be e-filed. Both CPL Articles 710 and 250 provide for late notice for good cause shown. Regarding the specific recommendations on pages 17 and 18, the following represent some thoughts I probably expressed in-artfully during this afternoon's meeting: 1. Unless you want the legislature to establish the pilot program period, I believe the first sentence should include the following sunset language in the introductory sentence: "...permit e-filing [until January 1, 2018] as..."2. If a six year (or longer) sunset provision was established, there might be a shorter "sunrise provision for non-justice local courts to address the concerns raised at today's meeting but allow flexibility for the Chief Judge and the Administrative Board. To accomplish that, you might consider inserting the following in the second sentence in the second bulleted paragraph: "...not be authorized in {City or District courts or Criminal Courts of NYC before January 1, 2015 and not authorized} in the Town...."3. The Intermediate Appellate Courts and Court of Appeals may all already require e-filing. To the extent they do not, I would also suggest adding a new bullet point to include studying the feasibility of such.4. Since the committee believes there may be some portions of the civil rules that should not apply in criminal cases (e.g. public on-line access), I would suggest inserting into the third bulleted paragraph the following language: "...preserved, {amended} and extended to..."5. A new bullet should be added to include study of e-record retention for all parties and the courts for all criminal cases. Such a study could explore the extent, if any, that present court rules require parties to retain hard copies of documents in pending or disclosed cases which might instead be converted by that entity to PDF/A format. The cost savings involving storage and retrieval for those institutional offices might justify a decision on their part to scan & shred. The cost savings could then be used to off-set any financial burdens imposed by implementing e-filing in those offices so that additional public funding for e-filing might be unnecessary or diminished.6. It took me a while to grasp the concepts of "secure" and "sealed." Given concerns raised this afternoon, I'd suggest a third tier might be considered for NYSCEF Criminal: "un-sealed yet unavailable to the public secure documents." Such an e-filing category might help alleviate concerns about broad access to relevant but sensitive case materials routinely provided to a judge but not normally kept in court files (NYSIS Reports). Such an intermediate category might also help perfect the record regarding discovery, Brady/Agurs, pre-trial notices and other materials, such as medical records, obtained by subpoena duces tecum which by statute are

returnable to the court. To the extent that e-filing may come to local courts at some time in the future, such a third category would be helpful in handling apparently eligible youthful offenders pursuant to CPL 720.15(1). To the extent that the advisory commentary on pages 12 - 16 incorporates the rules presently used in civil cases I offer the following thoughts: 1. To hopefully lessen the concerns raised by some this afternoon regarding the challenges which may be faced by large institutional providers, the first sentence of the second paragraph on page 12 could be altered to include the following language: "...such county is [fiscally and programmatically] capable of successfully implementing an e-filing program." 2. Given the concerns raised about transfer of files within a single institutional provider or between institutional providers, the rules should provide that NYSCEF software have a reliable "search and replace" feature to efficiently accommodate such contingencies. 3. Since with the possible exception of some civil pilot program institutional providers in NYC, there has been little experience with large public and non-profit (but potentially publically subsidized) providers, does it make sense for the parties to bear the cost of judicially requested working copies as they do under Rule 202.5-b(3)(iii) or could the courts lessen their out of pocket outlay of public funds and better monitor judicial acceptance of e-filing in criminal cases by having the expense born by the judge who decides to print out his or her own working copy of papers filed in a criminal matter?

Hon. Thomas Morse

3/2/2012

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March 14, 2012

Mr. Ronald P. Younkins, Esq.
Chief of Operations
Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

Dear Mr. Younkins:

Thank you for the opportunity to provide comments on behalf of the District Attorneys Association of New York State on the first draft of OCA's report on Electronic Filing in Criminal Actions and Proceedings.

The Association is composed of the 62 elected District Attorneys in New York State and represents many diverse jurisdictions that differ greatly in size and resources. The District Attorneys' offices run the gamut from tiny Hamilton County with a population of 5,000 and a single Part-time District Attorney on staff to Kings County with a population of 2.5 million and over 500 attorneys. We are rural, suburban and urban offices. More than 40 of our District Attorneys have 10 or fewer assistants on staff and 29 of these offices have 5 or fewer attorneys on staff. The resources available to each of these counties and their technological abilities and challenges vary significantly.

The Association welcomes the opportunity to work with the Office of Court Administration to explore electronic filing in criminal actions and "carefully work through the unique issues and problems presented by different courts and areas of the law" (Draft report, Page 20). As the draft report states (page 19), the best and most responsible way to move forward is to "expand e-filing in an incremental but steady manner that does not cause disruption to litigants, attorneys, state and local governments and the courts themselves." To that end, the four District Attorney's Offices represented on the Advisory Committee - Westchester, Franklin, Onondaga and Kings - which represent a cross section of small, medium and large offices both downstate and upstate have all agreed to participate in voluntary electronic filing pilot programs. These pilot programs should provide us with invaluable information about how e-filing can work in criminal actions and proceedings, the impact it will have and challenges it will pose in different parts of the State as well as the additional personnel and technological resources needed to transition to and utilize electronic filing. We share the serious concerns expressed by some of the institutional providers of defense services that electronic filing may strain the resources of many already overburdened defense and prosecutors' offices and may require additional support staff, updated printers or scanners, greater information technology resources and modifications to office case management systems. It is our understanding that electronic filing will not be implemented on a statewide basis until the pilot program have tested these issues and a careful evaluation has been conducted of the results by OCA with input from all of the affected stakeholders.

We believe that it would be prudent to begin these pilot programs on a very limited basis both in volume and scope. Consequently, we urge that any pilots be limited, as the Advisory Committee has discussed, to felony cases filed in superior court only. In addition, issues of some complexity that can impact on public safety and witness protection should not be included in the initial pilot programs. Thus, we urge that discovery materials not be included as well as documents now sealed by law, such as search warrants and wiretap applications and records, ex parte applications, sealed indictments, sealed confessions under CPL 710.30 and other documents that could compromise the security of witnesses.

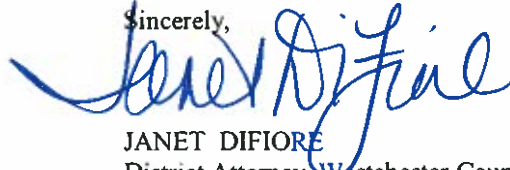
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DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

We would suggest that during the pendency of the pilot programs, efforts be made to provide broader education, training and technical assistance not just to counties participating in the pilot programs but to stakeholders throughout the criminal justice system about the functioning of the electronic filing system in preparation for electronic filing, to obtain information and feedback about the current status of information technology in various parts of the State and to conduct ongoing discussions and dialogue about collaborative efforts to enhance the resources available for participation in electronic filing.

After the conclusion of the pilot programs, all of the stakeholders should discuss and evaluate appropriate next steps in light of the information and experience we have gathered. We support legislation that would give the Chief Administrative Judge authority to continue to implement and expand consensual electronic filing to additional parts of the State where, after consultation with all essential local stakeholders, it is agreed that the counties have the human and technical resources necessary to successfully implement the program.

Sincerely,



JANET DIFIORE
District Attorney, Westchester County
President, DAASNY

County Clerks' Response to the Office of Court Administration's Draft Report on Electronic Filing in Criminal Actions and Proceedings

March 15, 2012

Introduction

While County Clerks are supportive of the concept of electronic filing (e-filing) of court records, concerns have been raised and require action before expansion of e-filing. The comments submitted by County Clerks throughout New York State are as set forth below in their entirety. The County Clerks reserve the right to comment further should further reports be forthcoming or should further legislation be introduced. The comments submitted below in no manner restricts the right of any County Clerk to comment further if any County Clerk so chooses. In addition, resolution of the concerns raised does not signify that County Clerks will support expansion of e-filing of court records, civil or criminal, without a thorough review and vetting of any purposed legislation.

Comments

Albany County

Albany County's principal concern is the misleading statement at the end of the following paragraph on page 14:

Unlike e-filing in civil cases, e-filed records in criminal cases will not be available for public viewing online. Online access to e-filed documents in criminal cases will be limited to the attorneys in the case or an unrepresented party given permission by the court to e-file. However, as is the case now for paper records, members of the public can come to the courthouse and view the electronic file on a computer terminal located in the courthouse, other than those documents sealed by statute, rule or court order.

For virtually all criminal cases that are in progress, almost no paper records are available on demand at the courthouse. In fact, OCA has had to issue rules requiring the Judge presiding over such cases to assure the availability of such papers, since these are almost always in the hands of the Court or the parties to the case, and NOT in the criminal case files maintained by the County Clerk until AFTER the case has been decided.

The most frequent demand for us to produce such records during criminal trials comes from the news media. In promoting the use of e-filing, the Courts must be careful not create the expectation that e-filed documents that are part of criminal trials will be instantly available to the press and the public. Further, requiring that County Clerks provide a computer terminal for the public to view these files – one that has been modified to NOT access any sealed record, along with staff to guide users through the process - would clearly constitute a new unfunded state mandate.

The obvious answer would be for OCA to make the commitment to provide access to all such e-filed criminal case documents through an OCA-funded computer terminal in the courthouse, especially during criminal trials.

Respectfully submitted,

Tom Clingan
Albany County Clerk

Cayuga County

First of all, I want to say how thankful I am to the committee for their hard work and the amount of time they have put into this matter. We are very excited about e-filing in Cayuga County!

One major point I want to make is that with e-recording, we were careful to move forward slowly and deliberately because we wanted to be sure to get it right the first time. We want to be sure we were protecting our office, our constituents, and our budget. We wanted the process to work efficiently and be user friendly. We should do the same for the e-filing process.

With all of the above in mind, I sat down with my deputies and we summarized our shared concerns below.

1) *Concerns about the fact that the Chief Administrative Judge (CAJ) will be selecting which counties will be mandated to e-file*

With all due respect to the CAJ, I believe the County Clerk and perhaps the DA and Judges in EACH County should work together as a team by taking steps in order to be e-file ready. When they have all of their ducks in order, and notify the CAJ of such, only then should that County be given the nod by the judge to proceed with e-filing. We believe it is vital that the CAJ has consent from each county.

2) *Concerns about the costs involved and the efficiency of the system to each county*

Cayuga County would like to use our own system rather than the NYSCEF system. Why? Because we have a vendor for all of our systems in our office. We've worked very hard and spent many \$\$ these past few years to put all of our systems on one terminal in order to make our systems user-friendly and easily accessible. We would add the e-filing system to our vendor's list of items on all of our public terminals. As with most County Clerks, we pay one fee for our contract with our vendor and e-filing would be an "add on" to our system. The last thing in the world I want in my office is separate terminals just for an e-filing system.

EFFICIENCY: I discussed this with a clerk in Surrogates Court today because she mentioned that they had to start e-filing (just Estates at this time). She said in order to process the paperwork she had to sit in front of two separate terminals, and go page by page, back and forth, and it was a very time consuming and inconvenient way to process paperwork. I can't imagine looking at hundreds of papers this way.

Although this report says there is “no cost”, we know there would be a cost to have our system interface with the portal that would get the court papers to us and to courts. We don’t know the cost of this process. Last year we heard that when one of the (civil) e-filing pilot counties asked to do the interface, they were told it would be thousands of dollars. Before we agree on moving forward, I need to know what the cost would be so I can let our County Administrator and Legislators know, and if possible, we can budget for this. Just like so many counties in New York State, we have no new money to spend and many cuts are being made. I hope the committee keeps this in mind because the last thing we need is another unfunded mandate.

I spoke to our District Attorney today and he had no idea that this was being pushed to happen quickly. He mentioned the words “unfunded mandate” several times and mentioned how difficult the procedure was when they had to deal with federal courts. He was going to contact the District Attorney’s Association to ask a few questions about this and get back to me.

3) Concerns about No Redaction Software and Public Access to Records

On page 8 of the draft report, I was surprised to read that the NYSCEF system still has no redaction software in place for their system. Many County Clerks have this built into their system in order to protect their constituents. I’m concerned that the committee’s answer to this is that the submitter can just push “secure” and the document will not be available to the public. I thought one of the reasons to e-file was to ensure access to court records. The “secure” button is something that any submitter can choose for any reason. What if the majority of submitters push “secure?” This would result in very few court documents being public accessible. We feel there should be a good reason that the submitter should make their documents secure.

And the other scenario could also happen. What if they DON’T push “secure” and something goes online that is private, such as personal identification information, victims names, etc.?

We were happy to read on page 14 that e-filed records in criminal cases will not be available online. Also, for those Counties who want to use the NYSCEF system, the committee has been assured of the many security measures in place. (pgs 14 & 15). Our vendor confirmed that they can guarantee us the same safety measures.

We are very concerned about the safety and privacy of victims and families all over NYS.

4) Concerns about rushing the e-filing of Criminal Cases

We all had the same question: What is the big rush to e-file criminal cases? While we agree that it would be great to get rid of the mountains of paper in the courts and in our offices, I’m perplexed that the e-filing of criminal cases is being pushed so quickly, especially when we’re still working on the e-filing of civil cases and have yet to resolve some issues (mentioned above).

If you read the draft report and didn’t know any better, you would think that e-filing of civil cases have been going on all over NYS for a long time, it’s very successful, and now it’s time to tackle criminal cases. All of the County Clerks know that this is not the case. Most of the e-filing of civil cases has been in large downstate counties who have more of a motivation to e-file due to the sheer number of cases they process. Presently there are issues with the

pilot counties who are (or who are TRYING to)e-file civil cases and they are not yet resolved. Instead of trying to get the original pilot counties up and running, this summer OCA agreed to allow a few more counties to be pilot counties for e-filing of civil cases. We agree that just the thought of having to e-file civil cases is a big step for our county! We believe we should get all of the counties up and running with civil cases and THEN tackle the criminal cases. Again, I want to mention that we have a vendor and we were told that we had the option of using our own system to e-file. As of this date, this has not been the case in any county in NYS.

5) *Concerns about our constitutional duty as a County Clerk*

Nowhere in this draft report does it mention where the case commences and where the copy of record is. It should state that the case begins and the copy of record is in the County Clerk's office.

6) *Concerns about documents coming into our office from inmates*

Cayuga County has two State prisons and we constantly get court papers from inmates. Are inmates automatically dismissed from e-filing? If not, are they going to be provided with terminals and scanners, or are they going to be "opted out" as is discussed on page 9?

7) Who is the person that our vendor can contact to ask specific questions about how to interface with the Courts using our own vendor and how much will this cost? We will need to have their contact information to get our questions answered.

8) *Concerns about who pays for the Credit Card (or extra) fees*

When a person submits an e-filing civil case in New York and other counties who are currently doing e-filing of civil cases, who pays the fee that is charged by the credit card company? I believe New York State has been paying those fees in order to encourage law firms to e-file. Is this correct? Presently we do not accept credit cards in our office because we have no way of paying the extra fees. I understand that some of the larger counties have so much volume that they have agreements with their banks to cover these charges. We are a medium-sized county and we don't have that advantage. So our question is, if there are such fees, who will pay them? The submitter?

Again, I want to say thank you to the committee for all of their hard work. I appreciate the opportunity to discuss this report with my staff and to express our concerns to the committee. I'm sure that some of our concerns stem from trying to understand how the process will affect our everyday activities, staff and costs to our office so I hope you don't mind all of the details that we included in our comments.

In speaking to a few other County Clerks, they have similar concerns. I hope these concerns will be discussed by the committee.

Respectfully submitted,

Sue Dwyer
Cayuga County Clerk

Cortland County

After reviewing the draft document for the Report on Electronic Filing, I couldn't help but note the absence of any reference to counties accepting the filings (be they civil or criminal) Is this still being discussed?

I do still have a concern with attorneys/submitters randomly or arbitrarily "securing" a document, especially if the clerk is supposed to allow public access to this document. Is it the responsibility of the clerk's office to redact confidential information from the document before allowing the public to view it? I thought that was the responsibility of the submitter.

NYSCEF insists that the sight is secure and I sincerely hope that is true but if it is secure enough for a sealed criminal filing why is it not secure enough to file Matrimonials?

The report has painted a very rosy picture of e-filing but unless we state the nut and bolts problems with the system, we won't be able to fix them.

As agents for the DMV, we know the issues there are working with a state run system. The DMV has an established IT department and there are still issues. I am concerned about the technical support we are going to receive from OCA if/when e-filing goes state wide.

In January we started commencement and filing of all criminal actions at the Cortland County Clerk's Office so that we could scan each paper as it is submitted. These are much more complicated proceedings than civil actions due to the levels of confidentiality and sealing of records. We did this in anticipation of e-filing of criminal records. What assurances do we have from the state that they would be able to technically support a state wide system?

As county clerks we are still "the keepers of the record" Who is liable if we agree to accept filings through NYSCEF and the system is hacked in to?

Respectfully submitted,

Elizabeth Larkin
Cortland County Clerk

Herkimer County

These are some of the concerns my office staff has shared with me.

- 1) We have the capability to seal certain documents on our current electronic records which may name a victim in a sexual offense, is there a way for the County Clerk to continue to seal this type of document without a court order to seal the whole case. The name of the defendant must be kept open for the purpose of criminal searches. If an attorney secures a document containing personal information for e-filing, however, it is available for viewing at the County Clerk's office, is there any responsibility for a County Clerk to secure or capability to redact these specific documents without a court order?
- 2) With electronic filing, we would have two systems at the same time, one which is currently used and one with documents e-filed. Unless e-filing is mandatory in all cases, how can we efficiently designate or know what cases are on what system.
- 3) Managing records for disposition. Will the e-filed documents be managed in the same way as paper or other electronic systems?

Respectfully submitted,

Sylvia Rowan
Herkimer County Clerk

Monroe County

- 1) The e-filing system fails to adequately protect the rights of victims and defendants. There must be a system developed and tested to ensure that the privacy and rights of victims as well as the rights of defendants are protected pursuant to the laws of New York State and the Constitution of the United States. The mechanisms utilized to protect victims and defendants must be fully developed before expansion of e-filing of criminal records.
- 2) The e-filing system does not have redaction capability which would protect private information, such as a social security number, from being released to the public. While we have been advised that an OCA redaction program is being developed, we have not seen the particulars of the program. As such, the program has not been introduced or tested nor have the mechanisms of such a program been revealed. In fact, civil records e-filed through NYSCEF, the OCA system, are not currently subject to redaction. Filings through the OCA website are still not reviewed for social security numbers and are not subject to a redaction program. This is a serious shortcoming of the program and must be fully addressed before further expansion of e-filing, civil or criminal.
- 3) The report allows the Chief Administrative Judge to decide where to implement e-filing of criminal records. County Clerks are separate and distinct Constitutional officers. Therefore, before e-filing is implemented, the County Clerks should consent to the program in their respective counties.

4) Similarly, mandated e-filing impacts not only County Clerks, but District Attorneys' Offices, Public Defenders' Offices and Legal Aid offices, all of which are County funded offices. If these relevant parties are directed to e-file criminal records without their consent, Counties will need to expend taxpayer dollars to implement the program. The County cost must be analyzed and any unfunded mandates should be avoided.

5) There has been no plan to address the different ways criminal papers are filed . In some counties, the County Clerk does not receive the criminal case until the end of the case with the exception of the indictment. In other counties, all the filings come through the County Clerk's office.

6) There needs to be a definite plan as to what will be e-filed in a criminal case and who will be responsible for securing documents that require said treatment. What will ensure that pre-sentence investigative reports, RAP sheets, criminal records, protected statements, for example are not part of a public record.

7) The use of the "secure" option needs to be defined.

8) County Clerks have the right to have court documents filed through their website rather than the OCA website. While development of this program has progressed, not one county has been approved to do so. Before e-filing is expanded, e-filing through a County Clerk site must be completed.

Respectfully submitted,

Cheryl Dinolfo
Monroe County Clerk

Suffolk County

The Office of the Suffolk County Clerk concurs with the comments made by Westchester County, and so long as those concerns are addressed, particularly as to the sealing of documents, we would support the recommendations made by the Advisory Committee in the Report on Electronic Filing in Criminal Actions and Proceedings. All of the hard work and diligence exercised by our representatives on said Committee, in protecting our collective interests, is deeply appreciated.

Respectfully submitted,

Judith A. Pascale
Suffolk County Clerk

Sullivan County

Personally, I did not find anything objectionable in the draft report, and overall, found it to be well written. All bases appeared to be well covered.

Respectfully submitted,

Daniel Briggs
Sullivan County Clerk

Westchester County

1) Page 13 paragraph 2 - "... program focused on felonies commenced by the filing of an indictment or superior court information."

Comment:

Supreme court informations may be misdemeanors if a defendant pleads down—Are these misdemeanors excluded or is this paragraph just indicating that e-filing will be in County Court jurisdiction?

2) Page 13, paragraph 4 *through* Page 14, paragraph 1 - "NYSCEF readily permits documents to be e-filed as sealed documents that are not viewable by anyone, including the parties to the case."

Comment:

This needs to be confirmed by NYSCEF as Westchester has not had success with Civil cases. We have had to seek OCA IT assistance to ensure documents within cases are sealed and are required to follow up with each document filing.

3) Page 14, Paragraph 2 - "...unrepresented party given permission by the court to e-file."

Comment:

What is meant by "given permission"? A pro se filer/defendant can apply for their own ID. Are the courts carving out an exemption for criminal cases?

4) Page 14 Paragraph 4 - "...limited to the papers commencing a criminal action, omnibus motions and defense responses to omnibus motions, and other motions such as post-conviction CPL 440 motions."

Comment:

Decisions/Orders and other documents signed by a judge can and should be uploaded as well. This may be assumed here. It should be explicit.

5) Page 15, Paragraph 3 - "...a Filing Agent User ID and Password so that they can e-file documents on behalf of attorneys in an office who do not wish to do the filing themselves."

Comment:

NYSCEF may wish to consider a government ID that can be utilized by the District Attorney's office so all ADA's may have filing/viewing access to cases. The Filing Agent ID is quite limited.

6) Page 17, 2nd Bullet - "...felony matters in the supreme court or county court."

Comment:

Misdemeanors are in County Court as well. Does this exclude specific PARTS within a court such as Westchester's Domestic Violence Part?

7) Page 17, 4th Bullet - "...an opt-out provision..."

Comment:

Who is uploading these documents on behalf of the parties opting out? Documents are not e-filed directly with the County Clerk in criminal cases – they are filed with the Criminal Calendar Clerk or the District Attorney's Office. Will these offices carry the burden of uploading the papers submitted in hard copy to maintain an all-electronic office?

8) Page 17, 6th Bullet - "...be automatically exempt from e-filing..."

Comment:

This should not be automatically exempt but are permitted by the Rules to opt-out without reason. We in Westchester have shown many pro se Defendants how to apply for an IDs and e-file on their own, so this is possible.

9) Page 17, 8th Bullet - "Where a record or part of a record is sealed...."

Comment:

a) There must be a carve-out or be explicit with regards to indictments or juvenile offenders – will they be sealed for the filing of the indictment? In paper, they are not.

b) Civil Rights 50.b cases – these are sealed for the protection of the victims only, not the Defendant. Rules should be specific with regards to sealing the entire case file from public view in NYSCEF as a safeguard instead of only select documents that identify or tend to identify the victim.

10) Page 18, Last Bullet - "...continue to consult..."

Comment:

As well as with the District Attorney, Criminal Court and County Clerk.

Respectfully submitted,

Timothy C. Idoni
Westchester County Clerk

APPENDIX E:

Advisory committee members

ADVISORY COMMITTEE ON E-FILING IN CRIMINAL COURT

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Courts Outside New York City*

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HON. CHERYL DiNOLFO
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